

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1662

Introduced by Assembly Member Lieber

February 22, 2005

An act to amend ~~Section 56515~~ of Sections 33590, 56001, 56028, 56028.5, 56138, 56171, 56172, 56173, 56175, 56176, 56177, 56205, 56301, 56304, 56320, 56321, 56325, 56329, 56341, 56341.1, 56341.5, 56345.1, 56363, 56380, 56381, 56385, 56500.3, 56500.4, 56502, 56505, 56506, 56507, 56515, 56838, and 56841 of, to add Sections 56040.5, 56302.1, 56321.1, 56380.1, 56501.5, 56509, 56843, and 56844 to, to add Article 3.9 (commencing with Section 56058) to Chapter 1 of Part 30 of, and to repeal and add Sections 56337, 56345, 56346, 56837, and 56842 of, the Education Code, and to amend Section 7579.5 of, and to add Section 7579.6 to, the Government Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1662, as amended, Lieber. Special education: ~~confidentiality~~ conformance to federal law.

(1) Existing law establishes a right of individuals with exceptional needs to receive free appropriate public education and ensures the right to special instruction and related services needed to meet their unique needs, in conformity with federal law.

This bill would make various revisions generally conforming state law to federal requirements relating to, among others, pupil identification, assessment, and eligibility; individualized education program development, including notice, representation, and hearing procedures and requirements; and pupil data confidentiality, and would make other technical, nonsubstantive changes. To the extent

that these revisions would impose new duties on local educational agencies, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides that, in accordance with specified federal law, personally identifiable information about individuals with exceptional needs is confidential.~~

~~This bill would prohibit the education records of individuals with exceptional from being released to participating agencies without the consent of his or her parent or guardian, unless authorized to do so under applicable federal law, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 33590 of the Education Code is
2 amended to read:

3 33590. (a) There is in the state government the Advisory
4 Commission on Special Education consisting of the following 17
5 members:

6 (1) A Member of the Assembly appointed by the Speaker of
7 the Assembly.

8 (2) A Member of the Senate appointed by the Senate
9 Committee on Rules.

10 (3) Three public members appointed by the Speaker of the
11 Assembly, two of whom shall be individuals with a disability or
12 parents of pupils in either a public or private school who have
13 received or are currently receiving special education services due
14 to a disabling condition.

15 (4) Three public members appointed by the Senate Committee
16 on Rules, two of whom shall be individuals with a disability or
17 parents of pupils in either a public or private school who have
18 received or are currently receiving special education services due
19 to a disabling condition.

1 (5) Four public members appointed by the Governor, two of
2 whom shall be parents of pupils in either a public or private
3 school who have received or are currently receiving special
4 education services due to a disabling condition.

5 (6) Five public members appointed by the State Board of
6 Education, upon the recommendation of the Superintendent ~~of~~
7 ~~Public Instruction~~ or the members of the State Board of
8 Education, three of whom shall be parents of pupils in either a
9 public or private school who have received or are currently
10 receiving special education services due to a disabling condition,
11 and one of whom shall be a representative of the charter school
12 community.

13 (b) (1) Each member shall be selected to ensure that the
14 commission is representative of the state population and
15 composed of individuals involved in, or concerned with, the
16 education of children with disabilities, including parents of
17 children with disabilities, *ages birth to 26 years, inclusive*;
18 individuals with disabilities; teachers; representatives of higher
19 education that prepare special education and related services
20 personnel; state and local education officials, *including, but not*
21 *limited to, officials who carry out activities under Part B*
22 *(commencing with Section 11431, et seq.) of Subchapter VI of*
23 *Title 42 of the United States Code*; administrators of programs
24 for children with disabilities; representatives of other state
25 agencies involved in the financing or delivery of related services
26 to children with disabilities; representatives of private schools
27 and public charter schools; at least one representative of a
28 vocational community or business organization concerned with
29 the provision of transition services to children with disabilities;
30 and *a representative from the State Department of Social*
31 *Services responsible for foster care; and* representatives from the
32 *state* juvenile and adult corrections agencies.

33 (2) Each member shall be knowledgeable about the wide
34 variety of disabling conditions that require special programs in
35 order to achieve the goal of providing an appropriate education to
36 all eligible pupils.

37 (3) A majority of the members of the commission shall be
38 individuals with disabilities, or parents of children with
39 disabilities *who are ages birth to 26 years, inclusive*.

(c) The commission shall select one of its members to be chairperson of the commission. In addition to other duties, the chairperson shall notify the appointing bodies when a vacancy occurs on the commission and of the type of representative listed in subdivision (b) who is required to be appointed to fill the vacancy.

(d) The term of each public member is four years.

(e) A public member may not serve more than two terms.

SEC. 2. Section 56001 of the Education Code is amended to read:

56001. It is the intent of the Legislature that special education programs provide all of the following:

(a) Each individual with exceptional needs is assured an education appropriate to his or her needs in publicly supported programs through completion of his or her prescribed course of study or until the time that he or she has met proficiency standards prescribed.

~~(b) By June 30, 1991, early~~ Early educational opportunities shall be available to all children between the ages of three and five years who require special education and services.

(c) Early educational opportunities shall be made available to children younger than three years of age pursuant to Chapter 4.4 (commencing with Section 56425), appropriate sections of this part, and the California Early Intervention ~~Service Services Act~~; ~~Title (Title 14 (commencing with Section 95000) of the Government Code Code).~~

(d) Any child younger than three years *of age*, potentially eligible for special education, shall be afforded the protections provided pursuant to the California Early Intervention Services Act, ~~Title (Title 14 (commencing with Section 95000) of the Government Code Code)~~ and Section 1439 of Title 20 of the United States Code and implementing regulations.

(e) Each individual with exceptional needs shall have his or her educational goals, objectives, and special education and related services specified in a written individualized education program.

(f) Education programs are provided under an approved local plan for special education that sets forth the elements of the programs in accordance with this part. This plan for special education shall be developed cooperatively with input from the

1 community advisory committee and appropriate representation
2 from special and regular teachers and administrators selected by
3 the groups they represent to ensure effective participation and
4 communication.

5 (g) Individuals with exceptional needs are offered special
6 assistance programs that promote maximum interaction with the
7 general school population in a manner that is appropriate to the
8 needs of both, taking into consideration, for hard-of-hearing or
9 deaf children, the individual's needs for a sufficient number of
10 age and language mode peers and for special education teachers
11 who are proficient in the individual's primary language mode.

12 (h) Pupils are transferred out of special education programs
13 when special education services are no longer needed.

14 (i) The unnecessary use of labels is avoided in providing
15 special education and related services for individuals with
16 exceptional needs.

17 (j) Procedures and materials for assessment and placement of
18 individuals with exceptional needs shall be selected and
19 administered so as not to be racially, culturally, or sexually
20 discriminatory. No single assessment instrument shall be the sole
21 criterion for determining *the* placement of a pupil. The
22 procedures and materials for assessment and placement shall be
23 in the individual's mode of communication. Procedures and
24 materials for use with pupils of limited English proficiency, as
25 defined in subdivision (m) of Section 52163 *and in paragraph*
26 *(18) of Section 1401 of Title 20 of the United States Code*, shall
27 be in the individual's ~~primary~~ *native language, as defined in*
28 *paragraph (20) of Section 1401 of Title 20 of the United States*
29 *Code*. All assessment materials and procedures shall be selected
30 and administered pursuant to Section 56320.

31 (k) Educational programs are coordinated with other public
32 and private agencies, including preschools, child development
33 programs, nonpublic nonsectarian schools, regional occupational
34 centers and programs, and postsecondary and adult programs for
35 individuals with exceptional needs.

36 (l) Psychological and health services for individuals with
37 exceptional needs shall be available to each schoolsite.

38 (m) Continuous evaluation of the effectiveness of these special
39 education programs by the ~~school district, special education local~~

1 ~~plan area, or county office~~ *local educational agencies* shall be
2 made to ensure the highest quality educational offerings.

3 (n) Appropriate qualified staff are employed, consistent with
4 credentialing requirements, to fulfill the responsibilities of the
5 local plan and positive efforts are made to employ qualified
6 disabled individuals.

7 (o) Regular and special education personnel are adequately
8 prepared to provide educational instruction and services to
9 individuals with exceptional needs.

10 *SEC. 3. Section 56028 of the Education Code is amended to*
11 *read:*

12 56028. (a) “Parent,” includes any of the following:

13 (1) A person having legal custody of a child.

14 (2) Any adult pupil for whom no guardian or conservator has
15 been appointed.

16 (3) A person acting in the place of a *natural or adoptive*
17 parent, including a grandparent ~~or~~, stepparent, *or other relative*
18 with whom the child lives. “Parent” also includes a parent
19 surrogate.

20 (4) A foster parent if the ~~natural parents’~~ *authority of a parent*
21 to make educational decisions on the child’s behalf has been
22 specifically limited by court order in accordance with subsection
23 (b) of Section 300.20 of Title 34 of the Code of Federal
24 Regulations.

25 (b) “Parent” does not include the state or any political
26 subdivision of government.

27 *SEC. 4. Section 56028.5 of the Education Code is amended to*
28 *read:*

29 56028.5. “Public agency” means a school district, county
30 office of education, special education local plan area, charter
31 school, or any other public agency under the auspices of the state
32 or any political subdivisions of the state providing special
33 education or related services to individuals with exceptional
34 needs, ~~and includes all public agencies listed in Section 300.22 of~~
35 ~~Title 34 of the Code of Federal Regulations.~~ *For purposes of this*
36 *part, “public agency,” means all of the public agencies listed in*
37 *Section 300.22 of Title 34 of the Code of Federal Regulations.*

38 *SEC. 5. Section 56040.5 is added to the Education Code, to*
39 *read:*

1 56040.5. (a) State and local educational agency personnel
2 are prohibited, pursuant to paragraph (25) of subsection (a) of
3 Section 1412 of Title 20 of the United States Code, from
4 requiring an individual with exceptional needs to obtain a
5 prescription for a medication that is a substance covered by the
6 Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) as a
7 condition of attending school, receiving an assessment under
8 subsection (a) or (c) of Section 1414 of Title 20 of the United
9 States Code, or receiving services under this part.

10 (b) Subdivision (a) does not create a federal prohibition
11 against teachers and other school personnel consulting or
12 sharing classroom-based observations with parents or guardians
13 regarding a pupil's academic and functional performance, his or
14 her behavior in the class or school, or the need for assessment
15 for special education and related services under paragraph (3) of
16 subsection (a) of Section 1412 of Title 20 of the United States
17 Code.

18 SEC. 6. Article 3.9 (commencing with Section 56058) is
19 added to Chapter 1 of Part 30 of the Education Code, to read:

20
21 Article 3.9. Requirements for Special Education Teachers
22

23 56058. Special education teachers providing instruction and
24 educational services under this part shall meet the same "highly
25 qualified" requirements, as defined in paragraph (10) of Section
26 1401 of Title 20 of the United States Code, and standards
27 described in paragraph (14) of subsection (a) of Section 1412 of
28 Title 20 of the United States Code.

29 56059. This part does not create a right of action on behalf of
30 an individual with exceptional needs or class of pupils for failure
31 of a state or local educational agency employee to be highly
32 qualified.

33 SEC. 7. Section 56138 of the Education Code is amended to
34 read:

35 56138. ~~The superintendent~~ Superintendent shall develop, and
36 the state board shall adopt, performance goals and indicators for
37 individuals with exceptional needs that are consistent with, to the
38 maximum extent appropriate, the standards for all pupils in the
39 public education system, in accordance with the provisions of
40 ~~Section 300.137 of Title 34 of the Code of Federal Regulations~~

1 *paragraph (15) of subsection (a) of Section 1412 of Title 20 of*
2 *the United States Code.*

3 *SEC. 8. Section 56171 of the Education Code is amended to*
4 *read:*

5 ~~56171. Districts, special education local plan areas, and~~
6 ~~county offices~~ *Local educational agencies* shall locate, identify,
7 and assess all private school children with disabilities, including
8 religiously affiliated schoolage children, who have disabilities
9 and are in need of special education and related services residing
10 in the jurisdiction of the ~~district, special education local plan~~
11 ~~area, or county office~~ *local educational agencies* in accordance
12 with Section 56301. The activities undertaken to carry out this
13 responsibility for private school children with disabilities shall be
14 comparable to activities undertaken in accordance with the
15 provisions of ~~Section 300.451 of Title 34 of the Code of Federal~~
16 ~~Regulations~~ *clause (ii) of subparagraph (A) of paragraph (10) of*
17 *subsection (a) of Section 1412 of Title 20 of the United States*
18 *Code.*

19 *SEC. 9. Section 56172 of the Education Code is amended to*
20 *read:*

21 ~~56172. (a) The district, special education local plan area, or~~
22 ~~county office~~ *local educational agency* shall make provision for
23 the participation of private school children with disabilities in
24 special education programs under this part by providing them
25 with special education and related services in accordance with
26 the provisions of this article *and subparagraph (A) of paragraph*
27 *(10) of subsection (a) of Section 1412 of Title 20 of the United*
28 *States Code.*

29 *(b) The local educational agency or, where appropriate, the*
30 *department, shall ensure timely and meaningful consultation with*
31 *private school representatives and representatives of parents of*
32 *parentally placed private school children with disabilities during*
33 *the design and development of special education and related*
34 *services for the children in accordance with clause (iii) of*
35 *subparagraph (A) of paragraph (10) of subsection (a) of Section*
36 *1412 of Title 20 of the United States Code.*

37 *(c) When timely and meaningful consultation as required in*
38 *subdivision (b) has occurred, the local educational agency shall*
39 *obtain a written affirmation signed by the representatives of*
40 *participating private schools, and if the representatives do not*

1 *provide the affirmation within a reasonable period of time, the*
 2 *local educational agency shall forward the documentation of the*
 3 *consultation process to the department in accordance with clause*
 4 *(iv) of subparagraph (A) of paragraph (10) of subsection (a) of*
 5 *Section 1412 of Title 20 of the United States Code.*

6 *(d) A private school official shall have the right, pursuant to*
 7 *clause (v) of subparagraph (A) of paragraph (10) of subsection*
 8 *(a) of Section 1412 of Title 20 of the United States Code, to*
 9 *submit a complaint to the department that the local educational*
 10 *agency did not engage in consultation that was meaningful and*
 11 *timely or did not give due consideration to the views of the*
 12 *private school official.*

13 *(e) The provision of equitable services for children enrolled in*
 14 *private schools by their parents shall be provided by employees*
 15 *of a public agency, as defined in Section 56028.5, or through*
 16 *contract by the public agency with an individual, association,*
 17 *agency, organization, or other entity.*

18 *(f) Special education and related services, including materials*
 19 *and equipment, provided to a pupil with a disability who has*
 20 *been parentally placed in a private school shall be secular,*
 21 *neutral, and nonideological, as required by clause (vi) of*
 22 *subparagraph (A) of paragraph (10) of subsection (a) of Section*
 23 *1412 of Title 20 of the United States Code.*

24 *SEC. 10. Section 56173 of the Education Code is amended to*
 25 *read:*

26 *56173. To meet the requirements of Section 56172, each*
 27 *~~district, special education local plan area, or county office~~ local*
 28 *educational agency shall ~~spend on providing~~ provide special*
 29 *education and related services to ~~private school children~~ pupils*
 30 *with disabilities enrolled by a parent in private elementary and*
 31 *secondary schools, described in Section 56171, by expending an*
 32 *amount of federal state grant funds allocated to the state under*
 33 *Part B of the federal Individuals with Disabilities Education Act*
 34 *(20 U.S.C. Sec. 1400 et seq.) that is equal to a proportionate*
 35 *amount of federal funds made available under the Part B grant*
 36 *program for local assistance, in accordance with ~~Section 300.453~~*
 37 *~~of Title 34 of the Code of Federal Regulations and as provided in~~*
 38 *~~paragraph (2) of subsection (b) of Section 300.456 and Sections~~*
 39 *~~300.458, 300.459, 300.460, 300.461, and 300.462 of Title 34 of~~*
 40 *~~the Code of Federal Regulations~~ clause (i) of subparagraph (A)*

1 of paragraph (10) of subsection (a) of Section 1412 of Title 20 of
2 the United States Code and Section 300.453 of Title 34 of the
3 Code of Federal Regulations.

4 The control of public funds used to provide special education
5 and related services under subparagraph (A) of paragraph (10)
6 of subsection (a) of Section 1412 of Title 20 of the United States
7 Code, and title to materials, equipment, and property purchased
8 with those funds, shall be in a public agency for the uses and
9 purposes provided in the federal Individuals with Disabilities
10 Education Act (20 U.S.C. Sec. 1400 et seq.). A public agency
11 shall administer the funds and property.

12 SEC. 11. Section 56175 of the Education Code is amended to
13 read:

14 56175. If a parent or guardian of an individual with
15 exceptional needs, who previously received special education
16 and related services under the authority of the ~~district, special~~
17 ~~education local plan area, or county office local educational~~
18 ~~agency,~~ enrolls the child in a private elementary or secondary
19 school without the consent of or referral by the ~~district, special~~
20 ~~education local plan area, or county office local educational~~
21 ~~agency,~~ a court or a due process hearing officer may require the
22 ~~district, special education local plan area, or county office local~~
23 ~~educational agency~~ to reimburse the parent or guardian for the
24 cost of that enrollment if the court or due process hearing officer
25 finds that the ~~district, special education local plan area, or county~~
26 ~~office local educational agency~~ had not made a free appropriate
27 public education available to the child in a timely manner prior to
28 that enrollment in the private elementary or secondary school and
29 that the private placement is appropriate, in accordance with
30 ~~subsection (c) of Section 300.403 of Title 34 of the Code of~~
31 ~~Federal Regulations~~ clause (ii) of subparagraph (C) of
32 paragraph (10) of subsection (a) of Section 1412 of Title 20 of
33 the United States Code.

34 SEC. 12. Section 56176 of the Education Code is amended to
35 read:

36 56176. The cost of the reimbursement described in Section
37 56175 may be reduced or denied pursuant to clause (iii) of
38 subparagraph (C) of paragraph (10) of subsection (a) of Section
39 1412 of Title 20 of the United States Code in the event of any of
40 the following:

(a) At the most recent individualized education program meeting that a parent or guardian attended prior to removal of the child from the public school, the parent or guardian did not inform the individualized education program team that they were rejecting the placement proposed by the ~~district, special education local plan area, or county office~~ *local educational agency* to provide a free appropriate public education to the child, including stating his or her concerns and the intent to enroll the child in a private school at public expense.

(b) The parent or guardian did not give written notice to the ~~district, special education local plan area, or county office~~ *local educational agency* of the information described in subdivision (a) at least 10 business days, including any holidays that occur on a business day, prior to the removal of the child from the public school.

(c) Prior to the parent's *or guardian's* removal of the child from the public school, the ~~district, special education local plan area, or county office~~ *local educational agency* informed the parent, through the notice requirements ~~described in paragraph (1) of subdivision (a) of Section 56500.4 described in paragraph (3) of subsection (b) of Section 1415 of Title 20 of the United States Code~~, of its intent to assess the child, including a statement of the purpose of the assessment that was appropriate and reasonable, but the parent *or guardian* did not make the child available for the assessment.

(d) Upon a judicial finding of unreasonableness with respect to actions taken by a parent *or guardian*.

SEC. 13. Section 56177 of the Education Code is amended to read:

56177. (a) Notwithstanding the notice requirement in ~~subdivision (a) of Section 56176 subclause (I) of clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code~~, the cost of reimbursement ~~may~~ *shall* not be reduced or denied, *in accordance with clause (iv) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code*, for failure to provide the notice in the event of any of the following:

~~(a) The parent is illiterate and cannot write in English.~~

~~(b) Compliance with subdivision (a) of Section 56176 would likely result in physical or serious emotional harm to the child.~~

~~(c) The school prevented the parent from providing the notice.~~

~~(d) The parent had not received notice of the due process hearing rights under Chapter 5 (commencing with Section 56500).~~

(1) The school prevented the parent or guardian from providing the notice.

(2) The parents had not received notice, pursuant to Section 1415 of Title 20 of the United States Code, of the notice requirement in subclause (I) of clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(3) Compliance with the federal provision cited in paragraph (2) would likely result in physical harm to the child.

(b) In the discretion of a court or a hearing officer, the cost of reimbursement may not be reduced or denied for failure to provide the notice in either of the following circumstances:

(1) The parent or guardian is illiterate or cannot write in English.

(2) Providing the notice described in subclause (I) of clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code would likely result in serious emotional harm to the child.

SEC. 14. Section 56205 of the Education Code is amended to read:

56205. (a) Each special education local plan area submitting a local plan to the ~~superintendent~~ Superintendent under this part shall assure, in conformity with subsection (a) of Section 1412 of, and paragraph (1) of subsection (a) of Section 1413 of, Title 20 of the United States Code, that it has in effect policies, procedures, and programs that are consistent with state laws, regulations, and policies governing the following:

(1) Free appropriate public education.

(2) Full educational opportunity.

(3) Child find and referral.

(4) Individualized education programs, including development, implementation, review, and revision.

(5) Least restrictive environment.

(6) Procedural safeguards.

1 (7) Annual and triennial assessments.

2 (8) Confidentiality.

3 (9) Transition from Subchapter III (commencing with Section
4 1431) of Title 20 of the United States Code to the preschool
5 program.

6 (10) Children in private schools.

7 (11) Compliance assurances, including general compliance
8 with the *federal* Individuals with Disabilities Education Act (20
9 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act
10 of 1973 (29 U.S.C. Sec. 794), the *federal* Americans with
11 Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal
12 regulations relating thereto, and this part.

13 (12) (A) A description of the governance and administration
14 of the plan, including identification of the governing body of a
15 multidistrict plan or the individual responsible for administration
16 in a single district plan, and of the elected officials to whom the
17 governing body or individual is responsible.

18 (B) A description of the regionalized operations and services
19 listed in Section 56836.23 and the direct instructional support
20 provided by program specialists in accordance with Section
21 56368 to be provided through the plan.

22 (C) Verification that a community advisory committee has
23 been established pursuant to Section 56190.

24 (D) Multidistrict plans, submitted pursuant to subdivision (b)
25 or (c) of Section 56195.1, shall do the following:

26 (i) Specify the responsibilities of each participating county
27 office and district governing board in the policymaking process,
28 the responsibilities of the superintendents of each participating
29 district and county in the implementation of the plan, and the
30 responsibilities of district and county administrators of special
31 education in coordinating the administration of the local plan.

32 (ii) Identify the respective roles of the administrative unit and
33 the administrator of the special education local plan area and the
34 individual local education agencies within the special education
35 local plan area in relation to the following:

36 (I) The hiring, supervision, evaluation, and discipline of the
37 administrator of the special education local plan area and staff
38 employed by the administrative unit in support of the local plan.

39 (II) The allocation from the state of federal and state funds to
40 the special education local plan area administrative unit or to

1 local education agencies within the special education local plan
2 area.

3 (III) The operation of special education programs.

4 (IV) Monitoring the appropriate use of federal, state, and local
5 funds allocated for special education programs.

6 (V) The preparation of program and fiscal reports required of
7 the special education local plan area by the state.

8 (iii) Include copies of joint powers agreements or contractual
9 agreements, as appropriate, for districts and counties that elect to
10 enter into those agreements pursuant to subdivision (b) or (c) of
11 Section 56195.1.

12 (E) The description of the governance and administration of
13 the plan, and the policymaking process, shall be consistent with
14 subdivision (f) of Section 56001, subdivision (a) of Section
15 56195.3, and Section 56195.9, and shall reflect a schedule of
16 regular consultations regarding policy and budget development
17 with representatives of special education and regular education
18 teachers and administrators selected by the groups they represent
19 and parent members of the community advisory committee
20 established pursuant to Article 7 (commencing with Section
21 56190) of Chapter 2.

22 ~~(13) Comprehensive system of personnel development.~~

23 ~~(14) Personnel standards, including standards for training and~~
24 ~~supervision of paraprofessionals.~~

25 ~~(15)–~~

26 *(13) Personnel qualifications to ensure that personnel,*
27 *including special education teachers and personnel and*
28 *paraprofessionals providing related services, necessary to*
29 *implement this part are appropriately and adequately prepared*
30 *and trained in accordance with paragraph (14) of subsection (a)*
31 *of Section 1412, and paragraph (3) of subsection (a) of Section*
32 *1413, of Title 20 of the United States Code.*

33 (14) Performance goals and indicators.

34 ~~(16)–~~

35 (15) Participation in state and districtwide assessments,
36 including assessments described under Section 1111 the federal
37 Elementary and Secondary Education Act of 1965 (20 U.S.C.
38 Sec. 6301 et seq.) and alternate assessments in accordance with
39 paragraph (16) of subsection (a) of Section 1412 of Title 20 of
40 the United States Code, and reports relating to assessments.

~~(17)–~~

(16) Supplementation of state, local, and other federal funds, including nonsupplantation of funds.

~~(18)–~~

(17) Maintenance of financial effort.

~~(19)–~~

(18) Opportunities for public participation prior to adoption of policies and procedures.

~~(20)–~~

(19) Suspension and expulsion rates.

(20) *Access to instructional materials by blind individuals with exceptional needs and others with print disabilities in accordance with paragraph (23) of subsection (a) of Section 1412 of Title 20 of the United States Code.*

(21) *Overidentification and disproportionate representation by race and ethnicity of children as individuals with exceptional needs, including children with disabilities with a particular impairment described in Section 1401 of Title 20 of the United States Code and in accordance with paragraph (24) of subsection (a) of Section 1412 of Title 20 of the United States Code.*

(22) *Prohibition of mandatory medication use pursuant to Section 56040.5 and in accordance with paragraph (25) of subsection (a) of Section 1412 of Title 20 of the United States Code.*

(b) Each local plan submitted to the ~~superintendent~~ *Superintendent* under this part shall also contain all the following:

(1) An annual budget plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraph (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual budget plan shall identify expected expenditures for all items required by this part which shall include, but not be limited to, the following:

(A) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

1 (B) Administrative costs of the plan.

2 (C) Special education services to pupils with severe
3 disabilities and low incidence disabilities.

4 (D) Special education services to pupils with nonsevere
5 disabilities.

6 (E) Supplemental aids and services to meet the individual
7 needs of pupils placed in regular education classrooms and
8 environments.

9 (F) Regionalized operations and services, and direct
10 instructional support by program specialists in accordance with
11 Article 6 (commencing with Section 56836.23) of Chapter 7.2.

12 (G) The use of property taxes allocated to the special
13 education local plan area pursuant to Section 2572.

14 (2) An annual service plan shall be adopted at a public hearing
15 held by the special education local plan area. Notice of this
16 hearing shall be posted in each school district in the special
17 education local plan area at least 15 days prior to the hearing.
18 The annual service plan may be revised during any fiscal year
19 according to the policymaking process established pursuant to
20 subparagraphs (D) and (E) of paragraph (12) of subdivision (a)
21 and consistent with subdivision (f) of Section 56001 and with
22 Section 56195.9. The annual service plan shall include a
23 description of services to be provided by each district and county
24 office, including the nature of the services and the physical
25 location at which the services will be provided, including
26 alternative schools, charter schools, opportunity schools and
27 classes, community day schools operated by school districts,
28 community schools operated by county offices of education, and
29 juvenile court schools, regardless of whether the district or
30 county office of education is participating in the local plan. This
31 description shall demonstrate that all individuals with exceptional
32 needs shall have access to services and instruction appropriate to
33 meet their needs as specified in their individualized education
34 programs.

35 (3) A description of programs for early childhood special
36 education from birth through five years of age.

37 (4) A description of the method by which members of the
38 public, including parents or guardians of individuals with
39 exceptional needs who are receiving services under the plan, may
40 address questions or concerns to the governing body or

1 individual identified in subparagraph (A) of paragraph (12) of
2 subdivision (a).

3 (5) A description of a dispute resolution process, including
4 mediation and final and binding arbitration to resolve disputes
5 over the distribution of funding, the responsibility for service
6 provision, and the other governance activities specified within
7 the plan.

8 (6) Verification that the plan has been reviewed by the
9 community advisory committee and that the committee had at
10 least 30 days to conduct this review prior to submission of the
11 plan to the superintendent.

12 (7) A description of the process being utilized to meet the
13 requirements of Section 56303.

14 (c) A description of the process being utilized to oversee and
15 evaluate placements in nonpublic, nonsectarian schools and the
16 method of ensuring that all requirements of each pupil's
17 individualized education program are being met. The description
18 shall include a method for evaluating whether the pupil is making
19 appropriate educational progress.

20 (d) The local plan, budget plan, and annual service plan shall
21 be written in language that is understandable to the general
22 public.

23 *SEC. 15. Section 56301 of the Education Code is amended to*
24 *read:*

25 ~~56301. (a) All individuals with disabilities residing in the~~
26 ~~state, including pupils with disabilities who are enrolled in~~
27 ~~elementary and secondary schools and private schools, including~~
28 ~~parochial schools, regardless of the severity of their disabilities,~~
29 ~~and who are in need of special education and related services,~~
30 ~~shall be identified, located, and assessed as required by paragraph~~
31 ~~(3) and clause (ii) of paragraph (10) of subsection (a) of Section~~
32 ~~1412 of Title 20 of the United States Code~~ *All children with*
33 *disabilities residing in the state, including children with*
34 *disabilities who are homeless children or are wards of the state*
35 *and children with disabilities attending private, including*
36 *religious, elementary and secondary schools, regardless of the*
37 *severity of their disabilities, and who are in need of special*
38 *education and related services, shall be identified, located, and*
39 *assessed and a practical method is developed and implemented*
40 *to determine which children with disabilities are currently*

1 *receiving needed special education and related services as*
2 *required by paragraph (3) of subsection (a), and clause (ii) of*
3 *subparagraph (A) of paragraph (10) of subsection (a), of Section*
4 *1412 of Title 20 of the United States Code. A child is not*
5 *required to be classified by his or her disability so long as each*
6 *child who has a disability listed in paragraph (3) of Section 1401*
7 *of Title 20 of the United States Code and who, by reason of that*
8 *disability, needs special education and related services as an*
9 *individual with exceptional needs defined in Section 56026.*

10 (b) In accordance with Section 300.125 of Title 34 of the Code
11 of Federal Regulations, the requirements of this section also
12 apply to highly mobile individuals with exceptional needs, such
13 as migrant and homeless children, and children who are
14 suspected of being an individual with exceptional needs pursuant
15 to Section 56026 and in need of special education, even though
16 they are advancing from grade to grade.

17 (c) (1) *The child find process shall ensure the equitable*
18 *participation in special education and related services of*
19 *parentally placed private school children with disabilities and an*
20 *accurate count of those children. Child find activities conducted*
21 *by local educational agencies, or where applicable, the*
22 *department, shall be similar to those activities undertaken for*
23 *pupils in public schools.*

24 (2) *In accordance with subclause (IV) of clause (ii) of*
25 *subparagraph (A) of paragraph (10) of subsection (a) of Section*
26 *1412 of Title 20 of the United States Code, the cost of the child*
27 *find activities in private, including religious, elementary and*
28 *secondary schools, may not be considered in determining*
29 *whether a local educational agency has met its obligations under*
30 *the proportionate funding provisions for children enrolled in*
31 *private, including religious, elementary and secondary schools.*

32 (3) *The child find process described in paragraph (1) shall be*
33 *completed in a time period comparable to that for other pupils*
34 *attending public schools in the local educational agency.*

35 ~~(e)–~~

36 (d) (1) Each special education local plan area shall establish
37 written policies and procedures pursuant to Section 56205 for use
38 by its constituent local agencies for a continuous child-find
39 system that addresses the relationships among identification,
40 screening, referral, assessment, planning, implementation,

1 review, and the triennial assessment. The policies and procedures
2 shall include, but need not be limited to, written notification of
3 all parents of their rights under this chapter, and the procedure
4 for initiating a referral for assessment to identify individuals with
5 exceptional needs. ~~Parents~~

6 *(2) In accordance with subparagraph (A) of paragraph (1) of*
7 *subsection (d) of Section 1415 of Title 20 of the United States*
8 *Code, parents shall be given a copy of their rights and procedural*
9 *safeguards only one time a year, except that a copy also shall be*
10 *given to the parents upon initial referral for assessment or*
11 *parental request for assessment, upon notice of an individualized*
12 *education program meeting or reassessment, upon filing a*
13 *complaint, and upon filing for a prehearing mediation conference*
14 *pursuant to Section 56500.3 or a due process hearing request*
15 *pursuant to Section 56502 the first occurrence of the filing for a*
16 *due process hearing under Section 56502, and upon request by a*
17 *parent.*

18 *(3) A local educational agency may place a current copy of*
19 *the procedural safeguards notice on its Internet Web site, if such*
20 *Web site exists, pursuant to subparagraph (B) of paragraph (1)*
21 *of subsection (d) of Section 1415 of Title 20 of the United States*
22 *Code.*

23 *(4) The contents of the procedural safeguards notice shall*
24 *contain the requirements listed in paragraph (2) of subsection (d)*
25 *of Section 1415 of Title 20 of the United States Code.*

26 ~~(d)~~

27 *(e) Child find data collected pursuant to this chapter, or*
28 *collected pursuant to a regulation or an interagency agreement,*
29 *are subject to the confidentiality requirements of Section 300.125*
30 *and Sections 300.560 to 300.577, inclusive, of Title 34 of the*
31 *Code of Federal Regulations.*

32 *SEC. 16. Section 56302.1 is added to the Education Code, to*
33 *read:*

34 *56302.1. (a) Once a child has been referred for an initial*
35 *assessment to determine whether the child is an individual with*
36 *exceptional needs as defined in Section 56026 and to determine*
37 *the educational needs of the child, the determination shall be*
38 *made within 60 days of receiving parental consent for the*
39 *assessment in accordance with subparagraph (C) of paragraph*

1 *(1) of subsection (a) of Section 1414 of Title 20 of the United*
2 *States Code.*

3 *(b) The 60-days time period does not apply to a local*
4 *educational agency if either of the following occur:*

5 *(1) A child enrolls in a school served by the local educational*
6 *agency after the relevant time period has commenced but prior to*
7 *a determination by his or her previous local educational agency*
8 *of whether the child is an individual with exceptional needs. The*
9 *exemption of this paragraph applies only if the subsequent local*
10 *educational agency is making sufficient progress to ensure a*
11 *prompt completion of the assessment, and the parent and*
12 *subsequent local educational agency agree to a specific date by*
13 *which the assessment shall be completed.*

14 *(2) The parent of a child repeatedly fails or refuses to produce*
15 *the child for the assessment.*

16 *SEC. 17. Section 56304 of the Education Code is amended to*
17 *read:*

18 *56304. (a) The parents or guardians of a pupil who has been*
19 *referred for initial assessment, or of a pupil ~~already~~ identified as*
20 *an individual with exceptional needs, shall be afforded an*
21 *opportunity to participate in meetings with respect to the*
22 *identification, assessment, and educational placement, pursuant*
23 *to Section 56342.5 and subsections (b) and (c) of Section*
24 *56341.5, of the pupil and with respect to the provision of a free*
25 *appropriate public education, as provided in Section 300.501 of*
26 *Title 34 of the Code of Federal Regulations.*

27 *(b) In accordance with subsection (f) of Section 1414 of Title*
28 *20 of the United States Code, when conducting individualized*
29 *education program meetings and placement meetings pursuant to*
30 *this part, and when carrying out administrative matters under*
31 *Chapter 5 (commencing with Section 56500), including*
32 *scheduling exchange of witness lists and status conferences, the*
33 *parent of an individual with exceptional needs and a local*
34 *educational agency may agree to use alternative means of*
35 *meeting participation, such as video conferences and conference*
36 *calls.*

37 *SEC. 18. Section 56320 of the Education Code is amended to*
38 *read:*

39 *56320. Before any action is taken with respect to the initial*
40 *placement of an individual with exceptional needs in special*

1 education instruction, an individual assessment of the pupil's
2 educational needs shall be conducted, by qualified persons, in
3 accordance with requirements including, but not limited to, all
4 the following:

5 (a) Testing and assessment materials and procedures used for
6 the purposes of assessment and placement of individuals with
7 exceptional needs are selected and administered so as not to be
8 racially, culturally, or sexually discriminatory.

9 (b) Tests and other assessment materials meet all the following
10 requirements:

11 (1) ~~Are provided and administered in the pupil's native~~
12 ~~language, pursuant to Section 300.19 of Title 34 of the Code of~~
13 ~~Federal Regulations, or other mode of communication, unless the~~
14 ~~assessment plan indicates reasons why this provision and~~
15 ~~administration are not clearly feasible~~ *language and form most*
16 *likely to yield accurate information on what the pupil knows and*
17 *can do academically, developmentally, and functionally, unless it*
18 *is not feasible to so provide or administer as required by clause*
19 *(ii) of subparagraph (A) of paragraph (3) of subsection (b) of*
20 *Section 1414 of Title 20 of the United States Code.*

21 (2) ~~Have been validated for the specific purpose for which~~
22 ~~they are used~~ *Are used for purposes for which the assessments or*
23 *measures are valid and reliable.*

24 (3) ~~Are administered by trained and knowledgeable personnel~~
25 ~~in conformance with the instructions provided by the producer of~~
26 ~~the tests and other assessment materials and are administered in~~
27 *accordance with any instructions provided by the producer of the*
28 *assessments, except that individually administered tests of*
29 *intellectual or emotional functioning shall be administered by a*
30 *credentialed school psychologist.*

31 (c) Tests and other assessment materials include those tailored
32 to assess specific areas of educational need and not merely those
33 which are designed to provide a single general intelligence
34 quotient.

35 (d) Tests are selected and administered to best ensure that
36 when a test administered to a pupil with impaired sensory,
37 manual, or speaking skills produces test results that accurately
38 reflect the pupil's aptitude, achievement level, or any other
39 factors the test purports to measure and not the pupil's impaired

1 sensory, manual, or speaking skills unless those skills are the
2 factors the test purports to measure.

3 (e) Pursuant to ~~subsection (f) of Section 300.532 of Title 34 of~~
4 ~~the Code of Federal Regulations subparagraph (B) of paragraph~~
5 ~~(2) of subsection (b) of Section 1414 of Title 20 of the United~~
6 ~~States Code~~, no single ~~procedure measure or assessment~~ is used
7 as the sole criterion for determining whether a pupil is an
8 individual with exceptional needs ~~and for~~ or determining an
9 appropriate educational program for the pupil.

10 (f) The pupil is assessed in all areas related to the suspected
11 disability including, if appropriate, health and development,
12 vision, including low vision, hearing, motor abilities, language
13 function, general intelligence, academic performance,
14 communicative status, self-help, orientation and mobility skills,
15 career and vocational abilities and interests, and social and
16 emotional status. A developmental history ~~is~~ *shall be* obtained,
17 when appropriate. For pupils with residual vision, a low vision
18 assessment shall be provided in accordance with guidelines
19 established pursuant to Section 56136. In assessing each pupil
20 under this article, the assessment shall be conducted in
21 accordance with subsections (h), (i), and (j) of Section 300.532 of
22 Title 34 of the Code of Federal Regulations.

23 (g) The assessment of a pupil, including the assessment of a
24 pupil with a suspected low incidence disability, shall be
25 conducted by persons knowledgeable of that disability. Special
26 attention shall be given to the unique educational needs,
27 including, but not limited to, skills and the need for specialized
28 services, materials, and equipment consistent with guidelines
29 established pursuant to Section 56136.

30 (h) As part of an initial assessment, if appropriate, and as part
31 of any reassessment under Part B of the *federal* Individuals with
32 Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and this
33 part, the group that includes members of the individualized
34 education program team, and other qualified professionals, as
35 appropriate, shall follow the procedures specified in subsection
36 ~~(a) of Section 300.533 of Title 34 of the Code of Federal~~
37 ~~Regulations (c) of Section 1414 of Title 20 of the United States~~
38 ~~Code~~. The group may conduct its review without a meeting.

39 (i) *Each local educational agency shall ensure that*
40 *assessments of individuals with exceptional needs who transfer*

1 *from one school district to another school district in the same*
 2 *academic year are coordinated with the individual's prior and*
 3 *subsequent schools, as necessary and as expeditiously as*
 4 *possible, in accordance with subparagraph (D) of paragraph (3)*
 5 *of subsection (b) of Section 1414 of Title 20 of the United States*
 6 *Code, to ensure prompt completion of full assessment.*

7 *SEC. 19. Section 56321 of the Education Code is amended to*
 8 *read:*

9 56321. (a) If an assessment for the development or revision
 10 of the individualized education program is to be conducted, the
 11 parent or guardian of the pupil shall be given, in writing, a
 12 proposed assessment plan within 15 days of the referral for
 13 assessment not counting days between the pupil's regular school
 14 sessions or terms or days of school vacation in excess of five
 15 schooldays from the date of receipt of the referral, unless the
 16 parent or guardian agrees, in writing, to an extension. However,
 17 in any event, the assessment plan shall be developed within 10
 18 days after the commencement of the subsequent regular school
 19 year or the pupil's regular school term as determined by each
 20 district's school calendar for each pupil for whom a referral has
 21 been made 10 days or less prior to the end of the regular school
 22 year. In the case of pupil school vacations, the 15-day time shall
 23 recommence on the date that the pupil's regular schooldays
 24 reconvene. A copy of the notice of a parent's or guardian's rights
 25 shall be attached to the assessment plan. A written explanation of
 26 all the procedural safeguards under the *federal* Individuals with
 27 Disabilities Education Act (20 U.S.C. Sec. 1400 ~~and following~~ *et*
 28 *seq.*), and the rights and procedures contained in Chapter 5
 29 (commencing with Section 56500), shall be included in the
 30 notice of a parent's or guardian's rights, including information on
 31 the procedures for requesting an informal meeting, prehearing
 32 mediation conference, mediation conference, or due process
 33 hearing; the timelines for completing each process; whether the
 34 process is optional; and the type of representative who may be
 35 invited to participate.

36 (b) The proposed assessment plan given to parents or
 37 guardians shall meet all the following requirements:

38 (1) Be in language easily understood by the general public.

1 (2) Be provided in the native language of the parent or
2 guardian or other mode of communication used by the parent or
3 guardian, unless to do so is clearly not feasible.

4 (3) Explain the types of assessments to be conducted.

5 (4) State that no individualized education program will result
6 from the assessment without the consent of the parent.

7 ~~(c) An assessment may not be conducted, unless the written~~
8 ~~consent of the parent or guardian is obtained prior to the~~
9 ~~assessment except pursuant to subdivision (e) of Section 56506.~~

10 *The local educational agency proposing to conduct an initial*
11 *assessment to determine if the child qualifies as an individual*
12 *with exceptional needs shall obtain informed consent from the*
13 *parent of the child before conducting the assessment, in*
14 *accordance with subparagraph (D) of paragraph (1) of*
15 *subsection (a) of Section 1414 of Title 20 of the United States*
16 *Code. If the parent of the child does not provide consent for an*
17 *initial assessment, or the parent fails to respond to a request to*
18 *provide the consent, the local educational agency may pursue the*
19 *initial assessment utilizing the procedures described in Section*
20 *1415 of Title 20 of the United States Code and in accordance*
21 *with paragraph (3) of subdivision (a) of Section 56501 and*
22 *subdivision (e) of Section 56506. The parent or guardian shall*
23 *have at least 15 days from the receipt of the proposed assessment*
24 *plan to arrive at a decision.* ~~Assessment~~ *The assessment may*
25 *begin immediately upon receipt of the consent.*

26 (d) *The local educational agency shall not be required to*
27 *obtain informed consent from the parent of a child for an initial*
28 *assessment to determine whether the child is an individual with*
29 *exceptional needs under any of the following circumstances*
30 *listed in subclause (II) of clause (iii) of subparagraph (D) of*
31 *paragraph (1) of subsection (a) of Section 1414 of Title 20 of the*
32 *United States Code:*

33 (1) *Despite reasonable efforts to do so, the local educational*
34 *agency cannot discover the whereabouts of the parent of the*
35 *child.*

36 (2) *The rights of the parent of the child have been terminated*
37 *in accordance with state law.*

38 (3) *The rights of the parent to make educational decisions*
39 *have been subrogated by a judge in accordance with state law*

1 *and consent for an initial assessment has been given by an*
2 *individual appointed by the judge to represent the child.*

3 (e) Consent for initial assessment may not be construed as
4 consent for initial placement or initial provision of special
5 education and related services to an individual with exceptional
6 needs, pursuant to ~~paragraph (2) of subsection (a) of Section~~
7 ~~300.505 of Title 34 of the Code of Federal Regulations~~ *subclause*
8 *(I) of clause (iii) of subparagraph (D) of paragraph (1) of*
9 *subsection (a) of Section 1414 of Title 20 of the United States*
10 *Code.*

11 ~~(e)–~~
12 (f) In accordance with paragraph (3) of subsection (a) of
13 Section 300.505 of Title 34 of the Code of Federal Regulations,
14 parental consent is not required before reviewing existing data as
15 part of an assessment or reassessment, or before administering a
16 test or other assessment that is administered to all children,
17 unless before administration of that test or assessment, consent is
18 required of the parents of all the children.

19 (g) *Pursuant to subparagraph (E) of paragraph (1) of*
20 *subsection (a) of Section 1414 of Title 20 of the United States*
21 *Code, the screening of a pupil by a teacher or specialist to*
22 *determine appropriate instructional strategies for curriculum*
23 *implementation shall not be considered to be an assessment for*
24 *eligibility for special education and related services.*

25 SEC. 20. Section 56321.1 is added to the Education Code, to
26 read:

27 56321.1. *If the child is a ward of the state and is not residing*
28 *with his or her parent, the agency shall, pursuant to clause (iii)*
29 *of subparagraph (D) of paragraph (1) of subsection (a) of*
30 *Section 1414 of Title 20 of the United States Code, make*
31 *reasonable efforts to obtain the informed consent from the*
32 *parent, as defined in Section 56028, of the child for an initial*
33 *assessment to determine whether the child is an individual with*
34 *exceptional needs.*

35 SEC. 21. Section 56325 of the Education Code is amended to
36 read:

37 56325. (a) ~~Whenever a pupil transfers into a school district~~
38 ~~from a school district not operating programs under the same~~
39 ~~local plan in which he or she was last enrolled in a special~~
40 ~~education program, the administrator of a local program under~~

1 ~~this part shall ensure that the pupil is immediately provided an~~
2 ~~interim placement for a period not to exceed 30 days. The interim~~
3 ~~placement must be in conformity with an individualized~~
4 ~~education program, unless the parent or guardian agrees~~
5 ~~otherwise. The individualized education program implemented~~
6 ~~during the interim placement may be either the pupil's existing~~
7 ~~individualized education program, implemented to the extent~~
8 ~~possible within existing resources, which may be implemented~~
9 ~~without complying with subdivision (a) of Section 56321, or a~~
10 ~~new individualized education program developed pursuant to~~
11 ~~Section 56321. (1) As required by subclause (I) of clause (i) of~~
12 ~~subparagraph (C) of paragraph (2) of subsection (d) of Section~~
13 ~~1414 of Title 20 of the United States Code, the following shall~~
14 ~~apply to special education programs for individuals with~~
15 ~~exceptional needs who transfer from school district to school~~
16 ~~district within the state. In the case of an individual with~~
17 ~~exceptional needs who has an individualized education program~~
18 ~~and transfers into a school district from a school district not~~
19 ~~operating programs under the same local plan in which he or she~~
20 ~~was last enrolled in a special education program within the same~~
21 ~~academic year, the local educational agency shall provide the~~
22 ~~pupil with a free appropriate public education, including services~~
23 ~~comparable to those described in the previously approved~~
24 ~~individualized education program, in consultation with the~~
25 ~~parents, until the local educational agency adopts the previously~~
26 ~~approved individualized education program or develops, adopts,~~
27 ~~and implements a new individualized education program that is~~
28 ~~consistent with federal and state law.~~

29 (2) *As required by subclause (II) of clause (i) of subparagraph*
30 *(C) of paragraph (2) of subsection (d) of Section 1414 of Title 20*
31 *of the United States Code, the following shall apply to special*
32 *education programs for individuals with exceptional needs who*
33 *transfer from an educational agency located outside the State of*
34 *California to a school district within California. In the case of an*
35 *individual with exceptional needs who transfers from school*
36 *district to school district within the same academic year, the*
37 *local educational agency shall provide the pupil with a free*
38 *appropriate public education, including services comparable to*
39 *those described in the previously approved individualized*
40 *education program, in consultation with the parents, until the*

1 *local educational agency conducts an assessment pursuant to*
2 *paragraph (1) of subsection (a) of Section 1414 of Title 20 of the*
3 *United States Code, if determined to be necessary by the local*
4 *educational agency, and develops a new individualized education*
5 *program, if appropriate, that is consistent with federal and state*
6 *law.*

7 *(b) (1) To facilitate the transition for an individual with*
8 *exceptional needs described in paragraph (1) of subdivision (a),*
9 *the new school in which the individual with exceptional needs*
10 *enrolls shall take reasonable steps to promptly obtain the pupil's*
11 *records, including the individualized education program and*
12 *supporting documents and any other records relating to the*
13 *provision of special education and related services to the pupil,*
14 *from the previous school in which the pupil was enrolled,*
15 *pursuant to paragraph (2) of subsection (a) of Section 99.31 of*
16 *Title 34 of the Code of Federal Regulations.*

17 *(2) The previous school in which the individual with*
18 *exceptional needs was enrolled shall take reasonable steps to*
19 *promptly respond to the request from the new school.*

20 ~~*(b) Before the expiration of the 30-day period, the interim*~~
21 ~~*placement shall be reviewed by the individualized education*~~
22 ~~*program team and a final recommendation shall be made by the*~~
23 ~~*team in accordance with the requirements of this chapter. The*~~
24 ~~*team may utilize information, records, and reports from the*~~
25 ~~*school district or county program from which the pupil*~~
26 ~~*transferred.*~~

27 ~~*(c) Commencing on July 1, 1998, If*~~*whenever a pupil*
28 *described in subdivision (a) was placed and residing in a*
29 *residential nonpublic, nonsectarian school, prior to transferring to*
30 *a school district in another special education local plan area, and*
31 *this placement is not eligible for funding pursuant to Section*
32 *56836.16, the special education local plan area that contains the*
33 *district that made the residential nonpublic, nonsectarian school*
34 ~~*placement shall continue to be*~~*is responsible for the funding of*
35 *the placement, including related services, for the remainder of the*
36 *school year. An extended year session is included in the school*
37 *year in which the session ends. This subdivision also applies to*
38 *special education and related services required under Section*
39 *7573 of the Government Code for an individual with exceptional*
40 *needs who was placed in a residential placement by an expanded*

1 *individualized education program team, pursuant to Section*
2 *7572.5 of the Government Code, if the parent of the individual*
3 *moves during the course of the year to a school district in*
4 *another special education local plan area.*

5 *SEC. 22. Section 56329 of the Education Code is amended to*
6 *read:*

7 56329. As part of the assessment plan given to parents or
8 guardians pursuant to Section 56321, the parent or guardian of
9 the pupil shall be provided with a written notice that shall include
10 all of the following information:

11 (a) (1) Upon completion of the administration of tests and
12 other assessment materials, an individualized education program
13 team meeting, including the parent or guardian and his or her
14 representatives, shall be scheduled, pursuant to Section 56341, to
15 determine whether the pupil is an individual with exceptional
16 needs as defined in Section 56026, and to discuss the assessment,
17 the educational recommendations, and the reasons for these
18 recommendations.

19 (2) *In making a determination of eligibility under paragraph*
20 *(1), a pupil shall not, pursuant to paragraph (5) of subsection (b)*
21 *of Section 1414 of Title 20 of the United States Code, be*
22 *determined to be an individual with exceptional needs if the*
23 *determinant factor for the determination is any of the following:*

24 (A) *Lack of appropriate instruction in reading, including the*
25 *essential components of reading instruction as defined in*
26 *paragraph (3) of Section 6368 of Title 20 of the United States*
27 *Code.*

28 (B) *Lack of instruction in mathematics.*

29 (C) *Limited English proficiency.*

30 (3) A copy of the assessment report and the documentation of
31 determination of eligibility shall be given to the parent or
32 guardian.

33 (b) A parent or guardian has the right to obtain, at public
34 expense, an independent educational assessment of the pupil
35 from qualified specialists, as defined by regulations of the board,
36 if the parent or guardian disagrees with an assessment obtained
37 by the public education agency, in accordance with Section
38 300.502 of Title 34 of the Code of Federal Regulations. If a
39 public education agency observed the pupil in conducting its
40 assessment, or if its assessment procedures make it permissible to

1 have in-class observation of a pupil, an equivalent opportunity
2 shall apply to an independent educational assessment of the pupil
3 in the pupil's current educational placement and setting, and
4 observation of an educational placement and setting, if any,
5 proposed by the public education agency, regardless of whether
6 the independent educational assessment is initiated before or
7 after the filing of a due process hearing proceeding.

8 (c) The public education agency may initiate a due process
9 hearing pursuant to Chapter 5 (commencing with Section 56500)
10 to show that its assessment is appropriate. If the final decision
11 resulting from the due process hearing is that the assessment is
12 appropriate, the parent or guardian ~~still has~~ *maintains* the right
13 for an independent educational assessment, but not at public
14 expense.

15 If the parent or guardian obtains an independent educational
16 assessment at private expense, the results of the assessment shall
17 be considered by the public education agency with respect to the
18 provision of free, appropriate public education to the child, and
19 may be presented as evidence at a due process hearing pursuant
20 to Chapter 5 (commencing with Section 56500) regarding the
21 child. If a public education agency observed the pupil in
22 conducting its assessment, or if its assessment procedures make it
23 permissible to have in-class observation of a pupil, an equivalent
24 opportunity shall apply to an independent educational assessment
25 of the pupil in the pupil's current educational placement and
26 setting, and observation of an educational placement and setting,
27 if any, proposed by the public education agency, regardless of
28 whether the independent educational assessment is initiated
29 before or after the filing of a due process hearing proceeding.

30 (d) If a parent or guardian proposes a publicly financed
31 placement of the pupil in a nonpublic school, the public
32 education agency shall have an opportunity to observe the
33 proposed placement and the pupil in the proposed placement, if
34 the pupil has already been unilaterally placed in the nonpublic
35 school by the parent or guardian. Any observation conducted
36 pursuant to this subdivision shall only be of the pupil who is the
37 subject of the observation and may not include the observation or
38 assessment of any other pupil in the proposed placement. The
39 observation or assessment by a public education agency of a
40 pupil other than the pupil who is the subject of the observation

1 pursuant to this subdivision may be conducted, if at all, only with
2 the consent of the parent or guardian pursuant to this article. The
3 results of any observation or assessment of any other pupil in
4 violation of this subdivision shall be inadmissible in any due
5 process or judicial proceeding regarding the free appropriate
6 public education of that other pupil.

7 *SEC. 23. Section 56337 of the Education Code is repealed.*

8 ~~56337. A pupil shall be assessed as having a specific learning~~
9 ~~disability which makes him or her eligible for special education~~
10 ~~and related services when it is determined that all the following~~
11 ~~exist:~~

12 ~~(a) A severe discrepancy exists between the intellectual ability~~
13 ~~and achievements in one or more of the following academic~~
14 ~~areas:~~

15 ~~(1) Oral expression.~~

16 ~~(2) Listening comprehension.~~

17 ~~(3) Written expression.~~

18 ~~(4) Basic reading skills.~~

19 ~~(5) Reading comprehension.~~

20 ~~(6) Mathematics calculation.~~

21 ~~(7) Mathematics reasoning.~~

22 ~~(b) The discrepancy is due to a disorder in one or more of the~~
23 ~~basic psychological processes and is not the result of~~
24 ~~environmental, cultural, or economic disadvantages.~~

25 ~~(c) The discrepancy cannot be corrected through other regular~~
26 ~~or categorical services offered within the regular instructional~~
27 ~~program.~~

28 *SEC. 24. Section 56337 is added to the Education Code, to*
29 *read:*

30 *56337. (a) A specific learning disability, as defined in*
31 *paragraph (30) of Section 1401 of Title 20 of the United States*
32 *Code, means a disorder in one or more of the basic*
33 *psychological processes involved in understanding or in using*
34 *language, spoken or written, which may manifest itself in the*
35 *imperfect ability to listen, think, speak, read, write, spell, or*
36 *perform mathematical calculations. The term "specific learning*
37 *disability" includes conditions such as perceptual disabilities,*
38 *brain injury, minimal brain dysfunction, dyslexia, and*
39 *developmental aphasia. That term does not include a learning*
40 *problem that is primarily the result of visual, hearing, or motor*

1 *disabilities, of mental retardation, of emotional disturbance, or*
2 *of environmental, cultural, or economic disadvantage.*

3 *(b) Notwithstanding any other provision of law and pursuant*
4 *to paragraph (6) of subsection (b) of Section 1414 of Title 20 of*
5 *the United States Code, in determining whether a pupil has a*
6 *specific learning disability as defined in subdivision (a), a local*
7 *educational agency is not required to take into consideration*
8 *whether a pupil has a severe discrepancy between achievement*
9 *and intellectual ability in oral expression, listening*
10 *comprehension, written expression, basic reading skill, reading*
11 *comprehension, mathematical calculation, or mathematical*
12 *reasoning.*

13 *(c) In determining whether a pupil has a specific learning*
14 *disability, a local educational agency may use a process that*
15 *determines if the pupil responds to scientific, research-based*
16 *intervention as a part of the assessment procedures described in*
17 *paragraphs (2) and (3) of subsection (b) of Section 1414 of Title*
18 *20 of the United States Code.*

19 *SEC. 25. Section 56341 of the Education Code is amended to*
20 *read:*

21 56341. (a) Each meeting to develop, review, or revise the
22 individualized education program of an individual with
23 exceptional needs shall be conducted by an individualized
24 education program team.

25 (b) The individualized education program team shall include
26 all of the following:

27 (1) One or both of the pupil's parents, a representative selected
28 by a parent, or both, in accordance with the *federal* Individuals
29 with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

30 (2) ~~At least~~ *Not less than* one regular education teacher of the
31 pupil, if the pupil is, or may be, participating in the regular
32 education environment. If more than one regular education
33 teacher is providing instructional services to the individual with
34 exceptional needs, one regular education teacher may be
35 designated by the ~~district, special education local plan area, or~~
36 ~~county office~~ *local educational agency* to represent the others.

37 The regular education teacher of an individual with exceptional
38 needs shall, to the extent appropriate, participate in the
39 development, review, and revision of the pupil's individualized
40 education program, including assisting in the determination of

1 appropriate positive behavioral interventions and *supports, and*
2 *other* strategies for the pupil, and *the determination of*
3 supplementary aids and services, ~~and program modifications or,~~
4 *and supports* for school personnel that will be provided for the
5 pupil, consistent with ~~paragraph (3) of subsection (a) of Section~~
6 ~~300.347 of Title 34 of the Code of Federal Regulations subclause~~
7 *(IV) of clause (i) of subparagraph (A) of paragraph (1) of*
8 *subsection (d) of Section 1414 of Title 20 of the United States*
9 *Code.*

10 (3) ~~At least~~ *Not less than* one special education teacher of the
11 pupil, or if appropriate, ~~at least not less than~~ one special
12 education provider of the pupil.

13 (4) A representative of the ~~district, special education local plan~~
14 ~~area, or county office~~ *local educational agency* who meets all of
15 the following :

16 (A) Is qualified to provide, or supervise the provision of,
17 specially designed instruction to meet the unique needs of
18 individuals with exceptional needs.

19 (B) Is knowledgeable about the general curriculum.

20 (C) Is knowledgeable about the availability of resources of the
21 local educational agency.

22 (5) An individual who ~~conducted an assessment of the pupil or~~
23 ~~who is knowledgeable about the assessment procedures used to~~
24 ~~assess the pupil, and is familiar with the assessment results or~~
25 ~~recommendations. The individual shall be qualified to~~ *can*
26 interpret the instructional implications of the assessment results.
27 The individual may be a member of the team described in
28 paragraphs (2) to (6), inclusive.

29 (6) At the discretion of the parent, guardian, or the ~~district,~~
30 ~~special education local plan area, or county office~~ *local*
31 *educational agency*, other individuals who have knowledge or
32 special expertise regarding the pupil, including related services
33 personnel, as appropriate. The determination of whether the
34 individual has knowledge or special expertise regarding the pupil
35 shall be made by the party who invites the individual to be a
36 member of the individualized education program team.

37 (7) Whenever appropriate, the individual with exceptional
38 needs.

39 (c) ~~For~~ *In accordance with Sections 300.540 and 300.542 of*
40 *Title 34 of the Code of Federal Regulations, for a pupil suspected*

1 of having a specific learning disability, at least one member of
2 the individualized education program team shall be qualified to
3 conduct individual diagnostic examinations of children, such as a
4 school psychologist, speech-language pathologist, or remedial
5 reading teacher. ~~At, and at~~ least one team member other than the
6 pupil's regular teacher shall observe the pupil's academic
7 performance in the regular classroom setting. In the case of a
8 child who is less than schoolage or out of school, a team member
9 shall observe the child in an environment appropriate for a child
10 of that age.

11 (d) (1) In the case of transition services, ~~the district, special~~
12 ~~education local plan area, or county office~~ *local educational*
13 *agency* shall invite an individual with exceptional needs ~~of any~~
14 ~~age~~ to attend his or her individualized education program
15 meeting if a purpose of the meeting will be the consideration of
16 ~~either, or both, of the following:~~

17 (A) ~~The individual's transition service needs under~~
18 ~~subdivision (a) of Section 56345.1.~~

19 (B) ~~The~~ *the* needed transition services for the individual ~~under~~
20 ~~subdivision (b) of Section 56345.1.~~

21 (2) If the individual with exceptional needs does not attend the
22 individualized education program meeting, ~~the district, special~~
23 ~~education local plan area, or county office~~ *local educational*
24 *agency* shall take steps to ensure that the individual's preferences
25 and interests are considered.

26 (3) ~~When implementing the requirements of subdivision (b) of~~
27 ~~Section 56345.1, the district, special education local plan area, or~~
28 ~~county office~~ *The local educational agency* also shall invite to
29 the individualized education program team meetings a
30 representative that is likely to be responsible for providing or
31 paying for transition services. If an agency invited to send a
32 representative to a meeting does not do so, ~~the district, special~~
33 ~~education local plan area, or county office~~ *local educational*
34 *agency* shall take other steps to obtain participation of the other
35 agency in the planning of any transition services.

36 (e) ~~A district, special education local plan area, or county~~
37 ~~office~~ *local educational agency* may designate another local
38 educational agency member of the individualized education
39 program team to serve also as the representative required
40 pursuant to paragraph (4) of subdivision (b) if the requirements

1 of subparagraphs (A), (B), and (C) of paragraph (4) of
2 subdivision (b) are met.

3 *(f) A member of the individualized education program team*
4 *shall not be required to attend an individualized education*
5 *program meeting, in whole or in part, if the parent of the*
6 *individual with exceptional needs and the local educational*
7 *agency agree that the attendance of the member is not necessary*
8 *because the member's area of the curriculum or related services*
9 *is not being modified or discussed in the meeting.*

10 *(g) A member of the individualized education program team*
11 *may be excused from attending an individualized education*
12 *program meeting, in whole or in part, if the meeting involves a*
13 *modification to or discussion of the member's area of the*
14 *curriculum or related services, if both of the following occur:*

15 *(1) The parent and the local educational agency consent to the*
16 *excusal.*

17 *(2) The member submits in writing to the parent and the*
18 *individualized education program team, input into the*
19 *development of the individualized education program prior to the*
20 *meeting.*

21 *(h) A parent's agreement under subdivision (f) and consent*
22 *under subdivision (g) shall be in writing.*

23 *(i) In the case of a child who was previously served under*
24 *Chapter 4.4 (commencing with Section 56425), Early Education*
25 *for Individuals with Exceptional Needs, or the California Early*
26 *Intervention Services Act under Title 14 (commencing with*
27 *Section 95000) of the Government Code, an invitation to the*
28 *initial individualized education program team meeting shall, at*
29 *the request of the parent, be sent to the infants and toddlers with*
30 *disabilities coordinator or other representatives of the early*
31 *education or early intervention system to assist with the smooth*
32 *transition of services.*

33 *SEC. 26. Section 56341.1 of the Education Code is amended*
34 *to read:*

35 *56341.1. (a) When developing each pupil's individualized*
36 *education program, the individualized education program team*
37 *shall consider the following:*

38 *(1) The strengths of the pupil ~~and the~~.*

39 *(2) The concerns of the parents or guardians for enhancing the*
40 *education of the pupil.*

1 ~~(2)–~~

2 (3) The results of the initial assessment or most recent
3 assessment of the pupil.

4 ~~(3) As appropriate, the results of the pupil's performance on~~
5 ~~any general state or districtwide assessment programs.~~

6 (4) *The academic, developmental, and functional needs of the*
7 *child.*

8 (b) The individualized education program team shall do the
9 following:

10 (1) In the case of a pupil whose behavior impedes his or her
11 learning or that of others, ~~consider, when appropriate, strategies,~~
12 ~~including the use of~~ positive behavioral interventions, ~~strategies,~~
13 ~~and supports, and other strategies,~~ to address that behavior.

14 (2) In the case of a pupil with limited English proficiency,
15 consider the language needs of the pupil as those needs relate to
16 the pupil's individualized education program.

17 (3) In the case of a pupil who is blind or visually impaired,
18 provide for instruction in braille, and the use of braille, unless the
19 individualized education program team determines, after an
20 assessment of the pupil's reading and writing skills, needs, and
21 appropriate reading and writing media, including an assessment
22 of the pupil's future needs *for instruction in braille or the use of*
23 *braille*, that instruction in braille *or the use of braille* is not
24 appropriate for the pupil.

25 (4) Consider the communication needs of the pupil, and in the
26 case of ~~the~~ a pupil who is deaf or hard of hearing, consider the
27 pupil's language and communication needs, opportunities for
28 direct communications with peers and professional personnel in
29 the pupil's language and communication mode, academic level,
30 and full range of needs, including opportunities for direct
31 instruction in the pupil's language and communication mode.

32 (5) Consider whether the pupil requires assistive technology
33 devices and services *as defined in paragraphs (1) and (2) of*
34 *Section 1401 of Title 20 of the United States Code.*

35 (c) If, in considering the special factors described in
36 subdivisions (a) and (b), the individualized education program
37 team determines that a pupil needs a particular device or service,
38 including an intervention, accommodation, or other program
39 modification, in order for the pupil to receive a free appropriate
40 public education, the individualized education program team

1 shall include a statement to that effect in the pupil's
2 individualized education program.

3 (d) The individualized education program team shall *review*
4 *the pupil's individualized education program periodically, but*
5 *not less frequently than annually, to determine whether the*
6 *annual goals for the pupil are being achieved, and* revise the
7 individualized education program, as appropriate, to address
8 among other matters the following:

9 (1) Any lack of expected progress toward the annual goals and
10 in the general curriculum, where appropriate.

11 (2) The results of any reassessment conducted pursuant to
12 Section 56381.

13 (3) Information about the pupil provided to, or by, the parents
14 or guardians, as described in subdivision (b) of Section 56381.

15 (4) The pupil's anticipated needs.

16 (5) ~~The factors described in subdivision (a)~~ *Any other relevant*
17 *matter.*

18 (e) *A regular education teacher of the pupil, who is a member*
19 *of the individualized education program team, shall participate*
20 *in the review and revision of the individualized education*
21 *program of the pupil consistent with subparagraph (C) of*
22 *paragraph (1) of subsection (d) of Section 1414 of Title 20 of the*
23 *United States Code.*

24 (f) The parent or guardian shall have the right to present
25 information to the individualized education program team in
26 person or through a representative and the right to participate in
27 meetings, relating to eligibility for special education and related
28 services, recommendations, and program planning.

29 ~~(f)–~~

30 (g) (1) Notwithstanding Section 632 of the Penal Code, the
31 parent or guardian, ~~district, special education local plan area, or~~
32 ~~county office or local educational agency~~ shall have the right to
33 record electronically the proceedings of individualized education
34 program team meetings on an audiotape recorder. The parent or
35 guardian, ~~district, special education local plan area, or county~~
36 ~~office or local educational agency~~ shall notify the members of the
37 individualized education program team of their intent to record a
38 meeting at least 24 hours prior to the meeting. If the ~~district,~~
39 ~~special education local plan area, or county office~~ *local*
40 *educational agency* initiates the notice of intent to audiotape

1 record a meeting and the parent or guardian objects or refuses to
2 attend the meeting because it will be tape recorded, ~~then~~ the
3 meeting shall not be recorded on an audiotape recorder.

4 (2) The Legislature hereby finds as follows:

5 (A) Under federal law, audiotape recordings made by a
6 ~~district, special education local plan area, or county office~~ *local*
7 *educational agency* are subject to the federal Family Educational
8 Rights and Privacy Act (20 U.S.C. Sec. 1232g), and ~~would,~~
9 ~~therefore, be~~ *are* subject to the confidentiality requirements of
10 the regulations under Sections 300.560 to 300.575, inclusive, of
11 Part 34 of the Code of Federal Regulations.

12 (B) Parents or guardians have the right, pursuant to Sections
13 99.10 to 99.22, inclusive, of Title 34 of the Code of Federal
14 Regulations, to do all of the following:

15 (i) Inspect and review the tape recordings.

16 (ii) Request that the tape recordings be amended if the parent
17 or guardian believes that they contain information that is
18 inaccurate, misleading, or in violation of the rights of privacy or
19 other rights of the individual with exceptional needs.

20 (iii) Challenge, in a hearing, information that the parent or
21 guardian believes is inaccurate, misleading, or in violation of the
22 individual's rights of privacy or other rights.

23 ~~(g)~~

24 (h) It is the intent of the Legislature that the individualized
25 education program team meetings be nonadversarial and
26 convened solely for the purpose of making educational decisions
27 for the good of the individual with exceptional needs.

28 *SEC. 27. Section 56341.5 of the Education Code is amended*
29 *to read:*

30 56341.5. (a) Each local educational agency convening a
31 meeting of the individualized education program team shall take
32 steps to ensure that no less than one of the parents or guardians of
33 the individual with exceptional needs are present at each
34 individualized education program meeting or are afforded the
35 opportunity to participate.

36 (b) Parents or guardians shall be notified of the individualized
37 education program meeting early enough to ensure an
38 opportunity to attend.

39 (c) The individualized education program meeting shall be
40 scheduled at a mutually agreed-upon time and place. The notice

1 of the meeting under subdivision (b) shall indicate the purpose,
2 time, and location of the meeting and who shall be in attendance.
3 Parents or guardians shall also be informed in the notice of the
4 right, pursuant to clause (ii) of paragraph (1) of subsection (b) of
5 Section 300.345 of Title 34 of the Code of Federal Regulations,
6 to bring other people to the meeting who have knowledge or
7 special expertise regarding the individual with exceptional needs.

8 (d) As part of the participation of an individual with
9 exceptional needs in the *development of an* individualized
10 education program ~~process~~, as required by federal law, the
11 individual with exceptional needs shall be allowed to provide
12 confidential input to any representative of his or her
13 individualized education program team.

14 ~~(e) For an individual with exceptional needs beginning at age~~
15 ~~14, or younger, if appropriate, the meeting notice shall also~~
16 ~~indicate that a purpose of the meeting will be the development of~~
17 ~~a statement of the transition services needs of the individual~~
18 ~~required by subdivision (a) of Section 56345.1 and indicate that~~
19 ~~the individual with exceptional needs is also invited to attend. In~~
20 ~~accordance with paragraph (3) of subsection (b) of Section~~
21 ~~300.345 of the Code of Federal Regulations, for an individual~~
22 ~~with exceptional needs beginning at 16 years of age or younger,~~
23 ~~if appropriate, the meeting notice shall also indicate that a~~
24 ~~purpose of the meeting is the consideration of needed transition~~
25 ~~services for the individual required by subdivision (b) of Section~~
26 ~~56345.1 and indicate that the individual with exceptional needs is~~
27 ~~invited to attend. If the pupil does not attend the individualized~~
28 ~~education program meeting, the local educational agency shall~~
29 ~~take steps to ensure that the pupil's preferences and interests are~~
30 ~~considered in accordance with paragraph (2) of subsection (b) of~~
31 ~~Section 300.344 of Title 34 of the Code of Federal Regulations.~~

32 (f) The meeting notice shall also identify any other local
33 agency in accordance with paragraph (3) of subsection (b) of
34 Section 300.344 of Title 34 of the Code of Federal Regulations.

35 (g) If no parent or guardian can attend the meeting, the local
36 educational agency shall use other methods to ensure parent or
37 guardian participation, including individual or conference
38 telephone calls.

39 (h) A meeting may be conducted without a parent or guardian
40 in attendance if the local educational agency is unable to

1 convince the parent or guardian that he or she should attend. In
2 this event, the local educational agency shall maintain a record of
3 its attempts to arrange a mutually agreed-upon time and place, as
4 follows:

5 (1) Detailed records of telephone calls made or attempted and
6 the results of those calls.

7 (2) Copies of correspondence sent to the parents or guardians
8 and any responses received.

9 (3) Detailed records of visits made to the home or place of
10 employment of the parent or guardian and the results of those
11 visits.

12 (i) The local educational agency shall take ~~whatever any~~
13 ~~action is~~ necessary to ensure that the parent or guardian
14 understands the proceedings at a meeting, including arranging for
15 an interpreter for parents or guardians with deafness or whose
16 native language is a language other than English.

17 (j) The local educational agency shall give the parent or
18 guardian a copy of the individualized education program, at no
19 cost to the parent or guardian.

20 *SEC. 28. Section 56345 of the Education Code is repealed.*

21 ~~56345. (a) The individualized education program is a written~~
22 ~~statement determined in a meeting of the individualized~~
23 ~~education program team and shall include, but not be limited to,~~
24 ~~all of the following:~~

25 ~~(1) The present levels of the pupil's educational performance,~~
26 ~~including the following:~~

27 ~~(A) For a schoolage child, how the pupil's disability affects~~
28 ~~the pupil's involvement and progress in the general curriculum.~~

29 ~~(B) For a preschoolage child, as appropriate, how the~~
30 ~~disability affects the child's participation in appropriate~~
31 ~~activities.~~

32 ~~(2) The measurable annual goals, including benchmarks or~~
33 ~~short-term objectives related to the following:~~

34 ~~(A) Meeting the pupil's needs that result from the pupil's~~
35 ~~disability to enable the pupil to be involved in and progress in the~~
36 ~~general curriculum.~~

37 ~~(B) Meeting each of the pupil's other educational needs that~~
38 ~~result from the pupil's disability.~~

39 ~~(3) The specific special educational instruction and related~~
40 ~~services and supplementary aids and services to be provided to~~

1 the pupil, or on behalf of the pupil, and a statement of the
2 program modifications or supports for school personnel that will
3 be provided for the pupil in order to do the following:

4 (A) To advance appropriately toward attaining the annual
5 goals.

6 (B) To be involved and progress in the general curriculum in
7 accordance with subparagraph (A) of paragraph (1) and to
8 participate in extracurricular and other nonacademic activities.

9 (C) To be educated and participate with other pupils with
10 disabilities and nondisabled pupils in the activities described in
11 this section.

12 (4) An explanation of the extent, if any, to which the pupil will
13 not participate with nondisabled pupils in regular classes and in
14 the activities described in paragraph (3).

15 (5) The individual modifications in the administration of state
16 or districtwide assessments of pupil achievement that are needed
17 in order for the pupil to participate in the assessment. If the
18 individualized education program team determines that the pupil
19 will not participate in a particular state or districtwide assessment
20 of pupil achievement (or part of an assessment), a statement of
21 the following:

22 (A) Why that assessment is not appropriate for the pupil.

23 (B) How the pupil will be assessed.

24 (6) The projected date for the beginning of the services and
25 modifications described in paragraph (3), and the anticipated
26 frequency, location, and duration of those services and
27 modifications included in the individualized education program.

28 (7) Appropriate objective criteria, evaluation procedures, and
29 schedules for determining, on at least an annual basis, whether
30 the annual goals are being achieved.

31 (8) Beginning at least one year before the pupil reaches the
32 age of 18, a statement shall be included in the individualized
33 education program that the pupil has been informed of his or her
34 rights under this part, if any, that will transfer to the pupil upon
35 reaching the age of 18 pursuant to Section 56041.5.

36 (9) A statement of how the pupil's progress toward the annual
37 goals described in paragraph (2) will be measured.

38 (10) A statement of how the pupil's parents or guardians will
39 be regularly informed, at least as often as parents or guardians

1 ~~are informed of their nondisabled pupil's progress in the~~
2 ~~following:~~

3 ~~(A) The pupil's progress toward the annual goals described in~~
4 ~~paragraph (2):~~

5 ~~(B) The extent to which that progress is sufficient to enable~~
6 ~~the pupil to achieve the goals by the end of the year.~~

7 ~~(b) If appropriate, the individualized education program shall~~
8 ~~also include, but not be limited to, all of the following:~~

9 ~~(1) For pupils in grades 7 to 12, inclusive, any alternative~~
10 ~~means and modes necessary for the pupil to complete the~~
11 ~~district's prescribed course of study and to meet or exceed~~
12 ~~proficiency standards for graduation.~~

13 ~~(2) For individuals whose native language is other than~~
14 ~~English, linguistically appropriate goals, objectives, programs~~
15 ~~and services:~~

16 ~~(3) Extended school year services when needed, as determined~~
17 ~~by the individualized education program team.~~

18 ~~(4) Provision for the transition into the regular class program if~~
19 ~~the pupil is to be transferred from a special class or nonpublic,~~
20 ~~nonsectarian school into a regular class in a public school for any~~
21 ~~part of the schoolday, including the following:~~

22 ~~(A) A description of activities provided to integrate the pupil~~
23 ~~into the regular education program. The description shall indicate~~
24 ~~the nature of each activity, and the time spent on the activity each~~
25 ~~day or week.~~

26 ~~(B) A description of the activities provided to support the~~
27 ~~transition of pupils from the special education program into the~~
28 ~~regular education program.~~

29 ~~(5) For pupils with low-incidence disabilities, specialized~~
30 ~~services, materials, and equipment, consistent with guidelines~~
31 ~~established pursuant to Section 56136.~~

32 ~~(c) It is the intent of the Legislature in requiring individualized~~
33 ~~education programs, that the local educational agency is~~
34 ~~responsible for providing the services delineated in the~~
35 ~~individualized education program. However, the Legislature~~
36 ~~recognizes that some pupils may not meet or exceed the growth~~
37 ~~projected in the annual goals and objectives of the pupil's~~
38 ~~individualized education program. Pursuant to paragraph (2) of~~
39 ~~subsection (a) of Section 300.350 of Title 34 of the Code of~~
40 ~~Federal Regulations, public education agencies shall make a~~

1 good faith effort to assist each individual with exceptional needs
2 to achieve the goals and objectives or benchmarks listed in the
3 individualized education program of the pupil.

4 ~~(d) Consistent with Section 56000.5 and clause (iv) of~~
5 ~~subparagraph (B) of paragraph (3) of subsection (d) of Section~~
6 ~~1414 of Title 20 of the United States Code, it is the intent of the~~
7 ~~Legislature that, in making a determination of what constitutes an~~
8 ~~appropriate education to meet the unique needs of a deaf or~~
9 ~~hard-of-hearing pupil in the least restrictive environment, the~~
10 ~~individualized education program team shall consider the related~~
11 ~~services and program options that provide the pupil with an equal~~
12 ~~opportunity for communication access. The individualized~~
13 ~~education program team shall specifically discuss the~~
14 ~~communication needs of the pupil, consistent with the guidelines~~
15 ~~adopted pursuant to Section 56136 and Page 49274 of Volume~~
16 ~~57 of the Federal Register, including all of the following:~~

17 ~~(1) The pupil's primary language mode and language, which~~
18 ~~may include the use of spoken language with or without visual~~
19 ~~cues, or the use of sign language, or a combination of both.~~

20 ~~(2) The availability of a sufficient number of age, cognitive,~~
21 ~~and language peers of similar abilities which may be met by~~
22 ~~consolidating services into a local plan areawide program or~~
23 ~~providing placement pursuant to Section 56361.~~

24 ~~(3) Appropriate, direct, and ongoing language access to special~~
25 ~~education teachers and other specialists who are proficient in the~~
26 ~~pupil's primary language mode and language consistent with~~
27 ~~existing law regarding teacher training requirements.~~

28 ~~(4) Services necessary to ensure communication-accessible~~
29 ~~academic instructions, school services, and extracurricular~~
30 ~~activities consistent with the Vocational Rehabilitation Act of~~
31 ~~1973 as set forth in Section 794 of Title 29 of the United States~~
32 ~~Code and the Americans with Disabilities Act of 1990 as set~~
33 ~~forth in Section 12101, and following, of Title 42 of the United~~
34 ~~States Code.~~

35 ~~(e) General Fund money made available to school districts or~~
36 ~~local agencies may not be used for any additional responsibilities~~
37 ~~and services associated with paragraphs (1) and (2) of~~
38 ~~subdivision (d), including the training of special education~~
39 ~~teachers and other specialists, even if those additional~~
40 ~~responsibilities or services are required pursuant to a judicial or~~

1 ~~state agency determination. Those responsibilities and services~~
2 ~~shall only be funded by a local educational agency as follows:~~

3 ~~(1) The costs of those activities shall be funded from existing~~
4 ~~programs and funding sources.~~

5 ~~(2) Those activities shall be supported by the resources~~
6 ~~otherwise made available to those programs.~~

7 ~~(3) Those activities shall be consistent with Sections 56240 to~~
8 ~~56243, inclusive.~~

9 ~~(f) It is the intent of the Legislature that the communication~~
10 ~~skills of teachers who work with hard-of-hearing and deaf~~
11 ~~children be improved. This section does not remove the local~~
12 ~~educational agency's discretionary authority in regard to~~
13 ~~in-service activities.~~

14 *SEC. 29. Section 56345 is added to the Education Code, to*
15 *read:*

16 *56345. (a) The individualized education program is a written*
17 *statement for each individual with exceptional needs that is*
18 *developed, reviewed, and revised in accordance with this section,*
19 *as required by subsection (d) of Section 1414 of Title 20 of the*
20 *United States Code, and that includes the following:*

21 *(1) A statement of the individual's present levels of academic*
22 *achievement and functional performance, including the*
23 *following:*

24 *(A) The manner in which the disability of the individual affects*
25 *his or her involvement and progress in the general education*
26 *curriculum.*

27 *(B) For preschool children, as appropriate, the manner in*
28 *which the disability affects his or her participation in*
29 *appropriate activities.*

30 *(C) For individuals with exceptional needs who take alternate*
31 *assessments aligned to alternate achievement standards, a*
32 *description of benchmarks or short-term objectives.*

33 *(2) A statement of measurable annual goals, including*
34 *academic and functional goals, designed to do all of the*
35 *following:*

36 *(A) Meet the individual's needs that result from the*
37 *individual's disability to enable the pupil to be involved in and*
38 *make progress in the general curriculum.*

39 *(B) Meet each of the pupil's other educational needs that*
40 *result from the individual's disability.*

1 (3) *A description of the manner in which the progress of the*
2 *pupil toward meeting the annual goals described in paragraph*
3 *(2) will be measured and when periodic reports on the progress*
4 *the pupil is making toward meeting the annual goals, such as*
5 *through the use of quarterly or other periodic reports,*
6 *concurrent with the issuance of report cards, will be provided.*

7 (4) *A statement of the special education and related services*
8 *and supplementary aids and services, based on peer-reviewed*
9 *research to the extent practicable, to be provided to the pupil, or*
10 *on behalf of the pupil, and a statement of the program*
11 *modifications or supports for school personnel that will be*
12 *provided to the pupil to do the following:*

13 (A) *To advance appropriately toward attaining the annual*
14 *goals.*

15 (B) *To be involved in and make progress in the general*
16 *education curriculum in accordance with paragraph (1) and to*
17 *participate in extracurricular and other nonacademic activities.*

18 (C) *To be educated and participate with other individuals with*
19 *exceptional needs and nondisabled pupils in the activities*
20 *described in this subdivision.*

21 (5) *An explanation of the extent, if any, to which the pupil will*
22 *not participate with nondisabled pupils in the regular class and*
23 *in the activities described in subparagraph (C) of paragraph (4).*

24 (6) (A) *A statement of any individual appropriate*
25 *accommodations that are necessary to measure the academic*
26 *achievement and functional performance of the pupil on state*
27 *and districtwide assessments consistent with subparagraph (A) of*
28 *paragraph (16) of subsection (a) of Section 1412 of Title 20 of*
29 *the United States Code.*

30 (B) *If the individualized education program team determines*
31 *that the pupil shall take an alternate assessment on a particular*
32 *state or districtwide assessment of pupil achievement, a*
33 *statement of the following:*

34 (i) *The reason why the pupil cannot participate in the regular*
35 *assessment.*

36 (ii) *The reason why the particular alternate assessment*
37 *selected is appropriate for the pupil.*

38 (7) *The projected date for the beginning of the services and*
39 *modifications described in paragraph (4), and the anticipated*

1 frequency, location, and duration of those services and
2 modifications.

3 (8) Beginning not later than the first individualized education
4 program to be in effect when the pupil is 16 years of age, and
5 updated annually thereafter, the following shall be included.

6 (A) Appropriate measurable postsecondary goals based upon
7 age-appropriate transition assessments related to training,
8 education, employment, and where appropriate, independent
9 living skills.

10 (B) The transition services, as defined in Section 56345.1,
11 including courses of study, needed to assist the pupil in reaching
12 those goals.

13 (b) If appropriate, the individualized education program shall
14 also include, but not be limited to, all of the following:

15 (1) For pupils in grades 7 to 12, inclusive, any alternative
16 means and modes necessary for the pupil to complete the
17 district's prescribed course of study and to meet or exceed
18 proficiency standards for graduation.

19 (2) For individuals whose native language is other than
20 English, linguistically appropriate goals, objectives, programs,
21 and services.

22 (3) Pursuant to Section 300.309 of Title 34 of the Code of
23 Federal Regulations, extended school year services shall be
24 included in the individualized education program and provided
25 to the pupil if the pupil's individualized education program team
26 determines, on an individual basis, that the services are
27 necessary for the provision of a free appropriate public
28 education to the pupil.

29 (4) Provision for the transition into the regular class program
30 if the pupil is to be transferred from a special class or nonpublic,
31 nonsectarian school into a regular class in a public school for
32 any part of the schoolday, including the following:

33 (A) A description of activities provided to integrate the pupil
34 into the regular education program. The description shall
35 indicate the nature of each activity, and the time spent on the
36 activity each day or week.

37 (B) A description of the activities provided to support the
38 transition of pupils from the special education program into the
39 regular education program.

1 (5) For pupils with low-incidence disabilities, specialized
2 services, materials, and equipment, consistent with guidelines
3 established pursuant to Section 56136.

4 (c) It is the intent of the Legislature in requiring individualized
5 education programs, that the local educational agency is
6 responsible for providing the services delineated in the
7 individualized education program. However, the Legislature
8 recognizes that some pupils may not meet or exceed the growth
9 projected in the annual goals and objectives of the pupil's
10 individualized education program. Pursuant to paragraph (2) of
11 subsection (a) of Section 300.350 of Title 34 of the Code of
12 Federal Regulations, public education agencies shall make a
13 good faith effort to assist each individual with exceptional needs
14 to achieve the goals and objectives or benchmarks listed in the
15 individualized education program of the pupil.

16 (d) Consistent with Section 56000.5 and clause (iv) of
17 subparagraph (B) of paragraph (3) of subsection (d) of Section
18 1414 of Title 20 of the United States Code, it is the intent of the
19 Legislature that, in making a determination of the services that
20 constitute an appropriate education to meet the unique needs of
21 a deaf or hard-of-hearing pupil in the least restrictive
22 environment, the individualized education program team shall
23 consider the related services and program options that provide
24 the pupil with an equal opportunity for communication access.
25 The individualized education program team shall specifically
26 discuss the communication needs of the pupil, consistent with
27 "Deaf Students Education Services Policy Guidance" (57 Fed.
28 Reg. 49274 (October 1992)), including all of the following:

29 (1) The pupil's's primary language mode and language, which
30 may include the use of spoken language with or without visual
31 cues, or the use of sign language, or a combination of both.

32 (2) The availability of a sufficient number of age, cognitive,
33 and language peers of similar abilities, which may be met by
34 consolidating services into a local plan areawide program or
35 providing placement pursuant to Section 56361.

36 (3) Appropriate, direct, and ongoing language access to
37 special education teachers and other specialists who are
38 proficient in the pupil's primary language mode and language
39 consistent with existing law regarding teacher training
40 requirements.

1 (4) *Services necessary to ensure communication-accessible*
2 *academic instructions, school services, and extracurricular*
3 *activities consistent with the federal Vocational Rehabilitation*
4 *Act of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal*
5 *Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et*
6 *seq.).*

7 (e) *State money appropriated to school districts or local*
8 *agencies may not be used for any additional responsibilities and*
9 *services associated with paragraphs (1) and (2) of subdivision*
10 *(b), including the training of special education teachers and*
11 *other specialists, even if those additional responsibilities or*
12 *services are required pursuant to a judicial or state agency*
13 *determination. Those responsibilities and services shall only be*
14 *funded by a local educational agency as follows:*

15 (1) *The costs of those activities shall be funded from existing*
16 *programs and funding sources.*

17 (2) *Those activities shall be supported by the resources*
18 *otherwise made available to those programs.*

19 (3) *Those activities shall be consistent with Sections 56240 to*
20 *56243, inclusive.*

21 (f) *It is the intent of the Legislature that the communication*
22 *skills of teachers who work with hard-of-hearing and deaf*
23 *children be improved. This section does not remove the local*
24 *educational agency's discretionary authority in regard to*
25 *in-service activities.*

26 (g) *Beginning not later than one year before the pupil*
27 *reaches the age 18, a statement that the pupil has been informed*
28 *of the pupil's rights under this part, if any, that will transfer to*
29 *the pupil upon reaching the age of 18 pursuant to Section*
30 *56041.5.*

31 (h) *The individualized education program team is not required*
32 *to include information under one component of a pupil's*
33 *individualized education program that is already contained*
34 *under another component of the individualized education*
35 *program.*

36 SEC. 30. *Section 56345.1 of the Education Code is amended*
37 *to read:*

38 56345.1. (a) ~~Beginning at age 14, or younger, if determined~~
39 ~~by the individualized education program team pursuant to~~
40 ~~paragraph (1) of subsection (b) of Section 300.347 of Title 34 of~~

1 the Code of Federal Regulations, a statement of the transition
2 service needs of the pupil shall be included in the pupil's
3 individualized education program and shall be updated annually.
4 The statement shall be included under applicable components of
5 the pupil's individualized education program that focuses on the
6 pupil's courses of study, such as participation in
7 advanced-placement courses or a vocational education program.

8 (b) Beginning at age 16 or younger and annually thereafter, in
9 accordance with Section 56462 and paragraph (30) of Section
10 1401 of Title 20 of the United States Code, a statement of needed
11 transition services shall be included in the pupil's individualized
12 education program, including whenever appropriate, a statement
13 of interagency responsibilities or any needed linkages.

14 (c) The term "transition services" *services,* as defined in
15 paragraph (34) of Section 1401 of Title 20 of the United States
16 Code and as used in subparagraph (B) of paragraph (8) of
17 subdivision (a) of Section 56345, means a coordinated set of
18 activities for an individual with exceptional needs that does *all of*
19 the following:

20 (1) Is designed within an outcome-oriented process, that
21 promotes movement from school to postschool activities,
22 including postsecondary education, vocational training,
23 integrated employment, including supported employment,
24 continuing and adult education, adult services, independent
25 living, or community participation.

26 (2) Is based upon the individual pupil's needs, taking into
27 account the pupil's preferences and interests.

28 (3) Includes instruction, related services, community
29 experiences, the development of employment and other
30 postschool adult living objectives, and, ~~when~~ *if* appropriate,
31 acquisition of daily living skills and functional vocational
32 evaluation.

33 (d)

34 (b) If a participating agency, other than the local educational
35 agency, fails to provide the transition services described in the
36 pupil's individualized education program in accordance with ~~this~~
37 ~~section~~ *paragraph (6) of subsection (d) of Section 1414 of Title*
38 *20 of the United States Code and paragraph (8) of subdivision*
39 *(a) of Section 56345,* the local educational agency shall
40 reconvene the individualized education program team to identify

1 alternative strategies to meet the transition service needs for the
2 pupil set out in the program.

3 *SEC. 31. Section 56346 of the Education Code is repealed.*

4 ~~56346. (a) Informed parental consent shall be obtained~~
5 ~~before the initial provision of special education and related~~
6 ~~services to an individual with exceptional needs pursuant to~~
7 ~~clause (ii) of paragraph (1) of subsection (a) of Section 300.505~~
8 ~~of Title 34 of the Code of Federal Regulations.~~

9 ~~(b) A pupil may not be required to participate in all or part of~~
10 ~~any special education program, unless the parent is first~~
11 ~~informed, in writing, of the facts that make participation in the~~
12 ~~program necessary or desirable, and of the contents of the~~
13 ~~individualized education program, and after this notice, consents,~~
14 ~~in writing, to all or part of the individualized education program.~~
15 ~~If the parent does not consent to all of the components of the~~
16 ~~individualized education program, those components of the~~
17 ~~program to which the parent has consented shall be implemented~~
18 ~~so as not to delay providing instruction and services to the pupil.~~

19 ~~(c) If the local educational agency determines that the part of~~
20 ~~the proposed special education program to which the parent does~~
21 ~~not consent is necessary to provide a free and appropriate public~~
22 ~~education to the pupil, a due process hearing shall be initiated~~
23 ~~pursuant to Chapter 5 (commencing with Section 56500), unless~~
24 ~~a prehearing mediation conference is held. During the pendency~~
25 ~~of the due process hearing, the local educational agency may~~
26 ~~reconsider the proposed individualized education program, may~~
27 ~~choose to meet informally with the parent pursuant to subdivision~~
28 ~~(b) of Section 56502, or may hold a mediation conference~~
29 ~~pursuant to Section 56503. As an alternative to holding a due~~
30 ~~process hearing, the parties may hold a prehearing mediation~~
31 ~~conference pursuant to Section 56500.3 to resolve any issue or~~
32 ~~dispute. If a due process hearing is held, the hearing decision~~
33 ~~shall be the final administrative determination and shall be~~
34 ~~binding upon the parties. While a prehearing mediation~~
35 ~~conference or due process hearing is pending, the pupil shall~~
36 ~~remain in his or her current placement, unless the parent and the~~
37 ~~local educational agency agree otherwise.~~

38 *SEC. 32. Section 56346 is added to the Education Code, to*
39 *read:*

1 56346. (a) *A local educational agency that is responsible for*
2 *making a free appropriate public education and related services*
3 *to the child with a disability under this part shall seek to obtain*
4 *informed consent from the parent of the child before providing*
5 *special education and related services to the child pursuant to*
6 *subclause (II) of clause (i) of subparagraph (D) of paragraph (1)*
7 *of subsection (a) of Section 1414 of Title 20 of the United States*
8 *Code.*

9 (b) *If the parent of the child refuses to consent to the receipt of*
10 *services pursuant to subdivision (a), the local educational agency*
11 *shall not provide special education and related services to the*
12 *child by utilizing the procedures in Section 1415 of Title 20 of the*
13 *United States Code or the procedures in subdivision (e) of*
14 *Section 56506.*

15 (c) *If the parent of the child refuses to consent to the receipt of*
16 *special education and related services, or the parent fails to*
17 *respond to a request to provide the consent, both of the following*
18 *are applicable:*

19 (1) *The local educational agency shall not be considered to be*
20 *in violation of the requirement to make available a free*
21 *appropriate public education to the child for the failure to*
22 *provide the child with the special education and related services*
23 *for which the local educational agency requests consent.*

24 (2) *The local educational agency shall not be required to*
25 *convene an individualized education program meeting or develop*
26 *an individualized education program under this part for the child*
27 *for the special education and related services for which the local*
28 *educational agency requests consent.*

29 (d) *If the parent of the child consents in writing to the receipt*
30 *of special education and related services for the child but does*
31 *not consent to all of the components of the individualized*
32 *education program, those components of the program to which*
33 *the parent has consented shall be implemented so as not to delay*
34 *providing instruction and services to the child.*

35 (e) *If the local educational agency determines that the*
36 *proposed special education program component to which the*
37 *parent does not consent is necessary to provide a free and*
38 *appropriate public education to the child, a due process hearing*
39 *shall be initiated in accordance with subsection (f) of Section*
40 *1415 of Title 20 of the United States Code. If a due process*

1 *hearing is held, the hearing decision shall be the final*
2 *administrative determination and shall be binding upon the*
3 *parties. While a resolution session, mediation conference, or due*
4 *process hearing is pending, the child shall remain in his or her*
5 *current placement, unless the parent and the local educational*
6 *agency agree otherwise.*

7 *SEC. 33. Section 56363 of the Education Code is amended to*
8 *read:*

9 56363. (a) Designated instruction and services as specified in
10 the individualized education program shall be available when the
11 instruction and services are necessary for the pupil to benefit
12 educationally from his or her instructional program. *The*
13 *designated instruction and services are in accordance with the*
14 *requirements for related services defined in paragraph (26) of*
15 *Section 1401 of Title 20 of the United States Code.* The
16 instruction and services shall be provided by the regular class
17 teacher, the special class teacher, or the resource specialist if the
18 teacher or specialist is competent to provide the instruction and
19 services and if the provision of the instruction and services by the
20 teacher or specialist is feasible. If not, the appropriate designated
21 instruction and services specialist shall provide the instruction
22 and services. Designated instruction and services shall meet
23 standards adopted by the board.

24 (b) These services may include, but are not limited to, the
25 following:

26 (1) Language and speech development and remediation. The
27 language and speech development and remediation services may
28 be provided by a speech-language pathology assistant as defined
29 in subdivision (f) of Section 2530.2 of the Business and
30 Professions Code.

31 (2) Audiological services.

32 (3) Orientation and mobility ~~instruction~~ services.

33 (4) Instruction in the home or hospital.

34 (5) Adapted physical education.

35 (6) Physical and occupational therapy.

36 (7) Vision services.

37 (8) Specialized driver training instruction.

38 (9) Counseling and guidance *services, including rehabilitation*
39 *counseling.*

1 (10) Psychological services other than assessment and
2 development of the individualized education program.

3 (11) Parent counseling and training.

4 (12) Health and nursing services, *including school nurse*
5 *services designed to enable an individual with exceptional needs*
6 *to receive a free appropriate public education as described in the*
7 *individualized education program.*

8 (13) Social worker services.

9 (14) Specially designed vocational education and career
10 development.

11 (15) Recreation services.

12 (16) Specialized services for low-incidence disabilities, such
13 as readers, transcribers, and vision and hearing services.

14 (17) *Interpreting services.*

15 (c) *Designated instruction and services do not include a*
16 *medical device that is surgically implanted, or the replacement of*
17 *that device.*

18 SEC. 34. Section 56380 of the Education Code is amended to
19 read:

20 56380. (a) ~~The district, special education local plan area, or~~
21 ~~county office local educational agency~~ shall maintain procedures
22 for conducting, ~~on at least an annual basis,~~ reviews of all
23 individualized education programs *not more frequently than once*
24 *a year, unless the parent and the local educational agency agree*
25 *otherwise.* The procedures shall provide for the review of the
26 pupil's progress and the appropriateness of placement, and the
27 making of any necessary revisions.

28 (b) ~~The district, special education local plan area, or county~~
29 ~~office shall notify, in writing, parents of their right to request a~~
30 ~~review by the individualized education program team. The notice~~
31 ~~may be part of the individualized education program.~~

32 (e) ~~Each individualized education program review shall be~~
33 ~~conducted in accordance with the notice and scheduling~~
34 ~~requirements for the initial assessment.~~

35 SEC. 35. Section 56380.1 is added to the Education Code, to
36 read:

37 56380.1. (a) *In making changes to a pupil's individualized*
38 *education program after the annual individualized education*
39 *program meeting for a school year, the parent of the individual*
40 *with exceptional needs and the local educational agency may*

1 agree, pursuant to subparagraph (D) of paragraph (3) of
2 subsection (d) of Section 1414 of the United States Code, not to
3 convene an individualized education program meeting for the
4 purposes of making those changes, and instead may develop a
5 written document to amend or modify the pupil's existing
6 individualized education program.

7 (b) Changes to the individualized education program may be
8 made, in accordance with subparagraph (F) of paragraph (3) of
9 subsection (d) of Section 1414 of the United States Code, either
10 by the entire individualized education program team, as provided
11 in subdivision (a), or by amending the individualized education
12 program rather than by redrafting the entire individualized
13 education program. Upon request, a parent shall be provided
14 with a revised copy of the individualized education program with
15 the amendments incorporated.

16 SEC. 36. Section 56381 of the Education Code is amended to
17 read:

18 56381. (a) (1) A reassessment of the pupil, based upon
19 procedures specified in Article 2 (commencing with Section
20 56320), and in accordance with paragraph (2) of subsection (a)
21 of Section 1414 of Title 20 of the United States Code, shall be
22 conducted ~~at least once every three years or more frequently, if~~
23 ~~conditions warrant a reassessment, or if the pupil's parent or~~
24 ~~teacher requests a reassessment and a new individualized~~
25 ~~education program to be developed.~~ if the local educational
26 agency determines that the educational or related services needs,
27 including improved academic achievement and functional
28 performance, of the pupil warrant a reassessment, or if the
29 pupil's parents or teacher requests a reassessment.

30 (2) A reassessment shall occur not more frequently than once
31 a year, unless the parent and the local educational agency agree
32 otherwise, and shall occur at least once every three years, unless
33 the parent and the local educational agency agree that a
34 reassessment is unnecessary.

35 If the reassessment so indicates, a new individualized
36 education program shall be developed.

37 (b) As part of any reassessment, the individualized education
38 program team and other qualified professionals, as appropriate,
39 shall do the following:

1 (1) Review existing assessment data on the pupil, including
2 assessments and information provided by the parents of the pupil,
3 as specified in clause (i) of paragraph (1) of subsection (a) of
4 Section 300.533 of Title 34 of the Code of Federal Regulations,
5 current classroom-based assessments and observations, and
6 teacher and related services providers' observations.

7 (2) On the basis of the review conducted pursuant to paragraph
8 (1), and input from the pupil's parents, identify what additional
9 data, if any, is needed to determine:

10 (A) Whether the pupil continues to have a disability described
11 in paragraph (3) of Section 1401 of Title 20 of the United States
12 Code.

13 (B) The present levels of performance and educational needs
14 of the pupil.

15 (C) Whether the pupil continues to need special education and
16 related services.

17 (D) Whether any additions or modifications to the special
18 education and related services are needed to enable the pupil to
19 meet the measurable annual goals set out in the individualized
20 education program of the pupil and to participate, as appropriate,
21 in the general curriculum.

22 (c) The local educational agency shall administer tests and
23 other assessment materials needed to produce the data identified
24 by the individualized education program team.

25 (d) If the individualized education program team and other
26 qualified professionals, as appropriate, determine that no
27 additional data is needed to determine whether the pupil
28 continues to be an individual with exceptional needs, the local
29 educational agency shall notify the pupil's parents of that
30 determination and the reasons for it, and the right of the parents
31 to request an assessment to determine whether the pupil
32 continues to be an individual with exceptional needs. The local
33 educational agency is not required to conduct an assessment,
34 unless requested by the pupil's parents.

35 (e) A local educational agency shall assess an individual with
36 exceptional needs in accordance with this section and procedures
37 specified in Article 2 (commencing with Section 56320), as
38 provided in paragraph (2) of subsection (c) of Section 300.534 of
39 Title 34 of the Code of Federal Regulations.

(f) A reassessment may not be conducted, unless the written consent of the parent is obtained prior to reassessment, except pursuant to subdivision (e) of Section 56506. Pursuant to paragraphs (1) and (2) of subsection (c) of Section 300.505 of Title 34 of the Code of Federal Regulations, informed parental consent need not be obtained for the reassessment of an individual with exceptional needs if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent has failed to respond. To meet the reasonable measure requirements of this subdivision, the local educational agency shall use procedures consistent with those set forth in subsection (d) of Section 300.345 of Title 34 of the Code of Federal Regulations.

(g) The individualized education program team and other qualified professionals referenced in subdivision (b) may conduct the review without a meeting, as provided in subsection (b) of Section 300.533 of Title 34 of the Code of Federal Regulations.

(h) Before determining that the individual is no longer an individual with exceptional needs, a local educational agency shall assess the individual in accordance with Section 56320 and this section, as appropriate, and ~~Sections 300.532 and 300.533 of Title 34 of the Code of Federal Regulations, pursuant to paragraph (1) of subsection (e) of Section 300.534 of Title 34 of the Code of Federal Regulations~~ in accordance with Section 1414 of Title 20 of the United States Code.

(i) (1) *The assessment described in subdivision (h) shall not be required before the termination of a pupil's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under Section 56026.*

(2) *For a pupil whose eligibility under this part terminates under circumstances described in paragraph (1), a local educational agency shall provide the pupil with a summary of the pupil's academic achievement and functional performance, which shall include recommendations on the manner in which to assist the pupil in meeting his or her postsecondary educational goals as required in clause (ii) of subparagraph (B) of paragraph (5) of subsection (c) of Section 1414 of Title 20 of the United States Code.*

1 (j) *To the extent possible, the local educational agency shall*
2 *encourage the consolidation of reassessment meetings for the*
3 *individual with exceptional needs and other individualized*
4 *education program team meetings for the individual.*

5 SEC. 37. *Section 56385 of the Education Code is amended to*
6 *read:*

7 56385. (a) ~~As provided in Section 300.138 of Title 34 of the~~
8 ~~Code of Federal Regulations~~ *paragraph (16) of subsection (a) of*
9 *Section 1412 of Title 20 of the United States Code, individuals*
10 *with exceptional needs shall be included in general statewide and*
11 *districtwide assessment programs, including assessments*
12 *described under Section 1111 of the Elementary and Secondary*
13 *Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.), with*
14 *appropriate accommodations, when and alternate assessments*
15 *where necessary and as indicated in their respective*
16 *individualized education programs.*

17 (b) ~~The superintendent~~ *Superintendent, or in the case of a*
18 *districtwide assessment, the local educational agency, shall*
19 *develop and implement guidelines for the participation of*
20 *individuals with exceptional needs in—alternative alternate*
21 *assessments for those pupils who cannot participate in—statewide*
22 ~~and districtwide assessment programs.~~ *regular assessments*
23 *described in subdivision (a) with accommodations as indicated*
24 *by their respective individualized education programs. The*
25 *guidelines shall provide for alternate assessments that meet the*
26 *following requirements:*

27 (1) *Are aligned with the state's challenging academic content*
28 *standards and challenging pupil academic achievement*
29 *standards.*

30 (2) *If the state has adopted alternate academic achievement*
31 *standards permitted under the regulations promulgated to carry*
32 *out paragraph (1) of subsection (b) of Section 1111 of the*
33 *Elementary and Secondary Education Act of 1965, measure the*
34 *achievement of individuals with exceptional needs against those*
35 *standards.*

36 (c) *The department, or in the case of a districtwide*
37 *assessment, the local educational agency, shall make available to*
38 *the public reports regarding the assessment of pupils that have*
39 *been identified as individuals with exceptional needs with the*
40 *same frequency and in the same detail as it reports on the*

assessment of pupils that have not been so identified, in accordance with ~~Section 300.139 of Title 34 of the Code of Federal Regulations~~ subparagraph (D) of paragraph (16) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(d) *The Superintendent, or, in the case of a districtwide assessment, the local educational agency, shall, to the extent feasible, pursuant to subparagraph (E) of paragraph (16) of subsection (a) of Section 1412 of Title 20 of the United States Code, use universal design principles in developing and administering any assessments under this section.*

SEC. 38. *Section 56500.3 of the Education Code is amended to read:*

56500.3. (a) It is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation prior to filing a request for a due process hearing. It is also the intent of the Legislature that these voluntary prehearing request mediation conferences be an informal process conducted in a nonadversarial atmosphere to resolve issues relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child, to the satisfaction of both parties. Therefore, attorneys or other independent contractors used to provide legal advocacy services may not attend or otherwise participate in the prehearing request mediation conferences.

(b) This part does not preclude the parent or the public educational agency from being accompanied and advised by nonattorney representatives in the mediation conferences and consulting with an attorney prior to or following a mediation conference. For purposes of this section, “attorney” means an active, practicing member of the State Bar of California or another independent contractor used to provide legal advocacy services, but does not mean a parent of the pupil who is also an attorney.

(c) Requesting or participating in a mediation conference is not a prerequisite to requesting a due process hearing.

(d) All requests for a mediation conference shall be filed with the ~~superintendent~~ Superintendent. The party initiating a mediation conference by filing a written request with the

1 superintendent shall provide the other party to the mediation with
2 a copy of the request at the same time the request is filed with the
3 superintendent. The mediation conference shall be conducted by
4 a person knowledgeable in the process of reconciling differences
5 in a nonadversarial manner and under contract with the
6 department pursuant to Section 56504.5. The mediator shall be
7 knowledgeable in the laws and regulations governing special
8 education.

9 (e) The prehearing mediation conference shall be scheduled
10 within 15 days of receipt by the ~~superintendent~~ *Superintendent* of
11 the request for mediation. The mediation conference shall be
12 completed within 30 days after receipt of the request for
13 mediation unless both parties to the prehearing mediation
14 conference agree to extend the time for completing the
15 mediation. Pursuant to paragraph (3) of subsection (b) of Section
16 300.506 of Title 34 of the Code of Federal Regulations, and to
17 encourage the use of mediation, the state shall bear the cost of the
18 mediation process, including any meetings described in
19 subsection (d) of Section 300.506 of Title 34 of the Code of
20 Federal Regulations. The costs of mediation shall be included in
21 the contract described in Section 56504.5.

22 ~~(f) Based upon the mediation conference, the district~~
23 ~~superintendent, the county superintendent, or the director of the~~
24 ~~public educational agency, or his or her designee, may resolve~~
25 ~~the issue or issues. However, this resolution may not conflict~~
26 ~~with state or federal law and shall be to the satisfaction of both~~
27 ~~parties. A copy of the written resolution shall be mailed to each~~
28 ~~party within 10 days following the mediation conference. In~~
29 ~~accordance with subparagraph (F) of paragraph (2) of~~
30 ~~subsection (e) of Section 1415 of Title 20 of the United States~~
31 ~~Code, if a resolution is reached that resolves the due process~~
32 ~~issue through the mediation process, the parties shall execute a~~
33 ~~legally binding written agreement that sets forth the resolution~~
34 ~~and that does the following:~~

35 *(1) States that all discussions that occurred during the*
36 *mediation process shall be confidential and may not be used as*
37 *evidence in any subsequent due process hearing or civil*
38 *proceeding.*

39 *(2) Is signed by both the parent and the representative of the*
40 *agency who has the authority to bind the agency.*

1 (3) *Is enforceable in any state court of competent jurisdiction*
2 *or in a federal district court of the United States.*

3 (g) If the mediation conference fails to resolve the issues to the
4 satisfaction of all parties, the party who requested the mediation
5 conference has the option of filing for a state-level hearing
6 pursuant to Section 56505. The mediator may assist the parties in
7 specifying any unresolved issues to be included in the hearing
8 request.

9 (h) Any mediation conference held pursuant to this section
10 shall be scheduled in a timely manner and shall be held at a time
11 and place reasonably convenient to the parties to the dispute in
12 accordance with paragraph (4) of subsection (b) of Section
13 300.506 of Title 34 of the Code of Federal Regulations.

14 (i) The mediation conference shall be conducted in accordance
15 with regulations adopted by the board.

16 (j) Notwithstanding any procedure set forth in this chapter, a
17 public educational agency and a parent may, if the party initiating
18 the mediation conference so chooses, meet informally to resolve
19 any issue or issues to the satisfaction of both parties prior to the
20 mediation conference.

21 (k) The procedures and rights contained in this section shall be
22 included in the notice of parent rights attached to the pupil's
23 assessment plan pursuant to Section 56321.

24 SEC. 39. *Section 56500.4 of the Education Code is amended*
25 *to read:*

26 56500.4. Pursuant to paragraphs (3) and (4) of subsection (b)
27 *and paragraph (1) of subsection (c)* of Section 1415 of Title 20
28 of the United States Code, and in accordance with Section
29 300.503 of Title 34 of the Code of Federal Regulations, ~~written~~
30 prior *written* notice shall be given by the public agency to the
31 parents or guardians of an individual with exceptional needs, or
32 to the parents or guardians of a child upon initial referral for
33 assessment.

34 SEC. 40. *Section 56501.5 is added to the Education Code, to*
35 *read:*

36 56501.5. (a) *Notwithstanding any other provision of law,*
37 *prior to a party invoking his or her right to an impartial due*
38 *process hearing under this chapter, the local educational agency*
39 *shall convene a resolution session, which is a meeting between*
40 *the parents and the relevant member or members of the*

1 individualized education program team who have specific
2 knowledge of the facts identified in the due process hearing
3 request, in accordance with subparagraph (B) of paragraph (1)
4 of subsection (f) of Section 1415 of Title 20 of the United States
5 Code.

6 (1) The meeting shall be convened within 15 days of receiving
7 notice of the parents' due process hearing request.

8 (2) The meeting shall include a representative of the agency
9 who has decisionmaking authority on behalf of the agency.

10 (3) The meeting shall not include an attorney of the local
11 educational agency, unless the parent is accompanied by an
12 attorney.

13 (4) At the meeting, the parents of the child may discuss their
14 due process hearing issue, and the facts that form the basis of the
15 due process hearing request, and the local educational agency
16 shall be provided the opportunity to resolve the matter.

17 (b) The resolution session described in subdivision (a) is not
18 required if the parents and the local educational agency agree in
19 writing to waive the meeting, or agree to use the mediation
20 process described in Section 56500.3.

21 (c) If the local educational agency has not resolved the due
22 process hearing issue to the satisfaction of the parents within 30
23 days of the receipt of the due process hearing request notice, the
24 due process hearing may occur, and all of the applicable
25 timelines for a due process hearing under this chapter shall
26 commence.

27 (d) In the case that a resolution is reached to resolve the due
28 process hearing issue at a meeting described in subdivision (a),
29 the parties shall execute a legally binding agreement that is both
30 of the following:

31 (1) Signed by both the parent and a representative of the local
32 educational agency who has the authority to bind the agency.

33 (2) Enforceable in any state court of competent jurisdiction or
34 in a federal district court of the United States.

35 (e) If the parties execute an agreement pursuant to subdivision
36 (d), a party may void the agreement within three business days of
37 the agreement's execution.

38 SEC. 41. Section 56502 of the Education Code is amended to
39 read:

1 56502. (a) All requests for a due process hearing shall be
2 filed with the ~~superintendent~~ *Superintendent* in accordance with
3 paragraphs (1) and (2) of subsection (c) of Section 300.507 of
4 Title 34 of the Code of Federal Regulations.

5 (b) The superintendent shall develop a model form to assist
6 parents and guardians in filing a request for due process that is in
7 accordance with paragraph (3) of subsection (c) of Section
8 300.507 of Title 34 of the Code of Federal Regulations.

9 (c) (1) The party, *or the attorney representing the party,*
10 initiating a due process hearing by filing a written request with
11 the ~~superintendent~~ *Superintendent* shall provide the other party to
12 the hearing with a copy of the request at the same time as the
13 request is filed with the ~~superintendent~~ *Superintendent*. *The due*
14 *process hearing request notice shall remain confidential. In*
15 *accordance with subparagraph (A) of paragraph (7) of*
16 *subsection (b) of Section 1415 of Title 20 of the United States*
17 *Code, the request shall include the following:*

18 (A) *The name of the child, the address of the residence of the*
19 *child, or available contact information in the case of a homeless*
20 *child, and the name of the school the child is attending.*

21 (B) *In the case of a homeless child or youth within the*
22 *meaning of paragraph (2) of Section 725 of the McKinney-Vento*
23 *Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available*
24 *contact information for the child and the name of the school the*
25 *child is attending.*

26 (C) *A description of the nature of the problem of the child*
27 *relating to the proposed initiation or change, including facts*
28 *relating to the problem.*

29 (D) *A proposed resolution of the problem to the extent known*
30 *and available to the party at the time.*

31 (2) *A party may not have a due process hearing until the*
32 *party, or the attorney representing the party, files a request that*
33 *meets the requirements listed in this subdivision.*

34 (d) (1) *The due process hearing request notice required by*
35 *subparagraph (A) of paragraph (7) of subsection (b) of Section*
36 *1415 of Title 20 of the United States Code shall be deemed to be*
37 *sufficient unless the party receiving the notice notifies the due*
38 *process hearing officer and the other party in writing that the*
39 *receiving party believes the due process hearing request notice*
40 *has not met the notice requirements. The party providing a*

1 hearing officer notification shall provide the notification within
2 15 days of receiving the due process hearing request notice.
3 Within five days of receipt of the notification, the hearing officer
4 shall make a determination on the face of the notice of whether
5 the notification meets the requirements of subparagraph (A) of
6 paragraph (7) of subsection (b) of Section 1415 of Title 20 of the
7 United States Code, and shall immediately notify the parties in
8 writing of the determination.

9 (2) The response to the due process hearing request notice
10 shall be made within 10 days of receiving the request notice in
11 accordance with subparagraph (B) of paragraph (2) of
12 subsection (c) of Section 1415 of Title 20 of the United States
13 Code.

14 (e) A party may amend a due process hearing request notice
15 only if the other party consents in writing to the amendment and
16 is given the opportunity to resolve the hearing issue through a
17 meeting held pursuant to subparagraph (B) of paragraph (1) of
18 subsection (f) of Section 1415 of Title 20 of the United States
19 Code, or the due process hearing officer grants permission,
20 except that the hearing officer may only grant permission at any
21 time not later than five days before a due process hearing occurs.
22 The applicable timeline for a due process hearing under this
23 chapter shall recommence at the time the party files an amended
24 notice, including the timeline under subparagraph (B) of
25 paragraph (1) of subsection (f) of Section 1415 of Title 20 of the
26 United States Code.

27 ~~(d)~~

28 (f) The ~~superintendent~~ Superintendent shall take steps to
29 ensure that within 45 days after receipt of the written hearing
30 request the hearing is immediately commenced and completed,
31 including, any mediation requested at any point during the
32 hearing process pursuant to paragraph (2) of subdivision (b) of
33 Section 56501, and a final administrative decision is rendered,
34 unless a continuance has been granted pursuant to Section 56505.

35 ~~(e)~~

36 (g) Notwithstanding any procedure set forth in this chapter, a
37 public education agency and a parent or guardian may, if the
38 party initiating the hearing so chooses, meet informally to resolve
39 any issue or issues relating to the identification, assessment, or
40 education and placement of the child, or the provision of a free

appropriate public education to the child, to the satisfaction of both parties prior to the hearing. The informal meeting shall be conducted by the district superintendent, county superintendent, or director of the public education agency or his or her designee. Any designee appointed pursuant to this subdivision shall have the authority to resolve the issue or issues.

~~(f)~~

(h) Upon receipt by the ~~superintendent~~ Superintendent of a written request by the parent or guardian or public education agency, the ~~superintendent~~ Superintendent or his or her designee or designees shall immediately notify, in writing, all parties of the request for the hearing and the scheduled date for the hearing. The notice shall advise all parties of all their rights relating to procedural safeguards. The ~~superintendent~~ Superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. The ~~superintendent~~ Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

SEC. 42. *Section 56505 of the Education Code is amended to read:*

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil.

(c) (1) The hearing shall be conducted by a person ~~knowledgeable in the laws and regulations governing special education and administrative hearings pursuant to Section 56504.5~~ who shall, at a minimum possess knowledge of, and the ability to understand, the provisions of this part and related state statutes and implementing regulations, the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), federal regulations pertaining to the act, and legal interpretations of this part and the federal law by federal and state courts, and who has satisfactorily completed training pursuant to this subdivision. The Superintendent shall establish standards for the training of hearing officers, the degree of

1 specialization of the hearing officers, and the quality control
2 mechanisms to be used to ensure that the hearings are fair and the
3 decisions are accurate. ~~A~~

4 *(2) The hearing officer shall possess the knowledge and ability*
5 *to conduct hearings in accordance with appropriate, standard*
6 *legal practice.*

7 *(3) The hearing officer shall possess the knowledge and ability*
8 *to render and write decisions in accordance with appropriate,*
9 *standard legal practice.*

10 *(4) A due process hearing may not be conducted by any*
11 *individual listed in ~~subsection (a) of Section 300.508 of Title 34~~*
12 *~~of the Code of Federal Regulations~~ clause (i) of subparagraph*
13 *(A) of paragraph (3) of subsection (f) of Section 1415 of Title 20*
14 *of the United States Code. Pursuant to subsection (b) of Section*
15 *300.508 of the Title 34 of the Code of Federal Regulations, a*
16 *person who is qualified to conduct a hearing is not an employee*
17 *of the agency solely because he or she is paid by the agency to*
18 *serve as a hearing officer. The hearing officer shall encourage the*
19 *parties to a hearing to consider the option of mediation as an*
20 *alternative to a hearing.*

21 *(d) Pursuant to subsection (a) of Section 300.514 of Title 34 of*
22 *the Code of Federal Regulations, during the pendency of the*
23 *hearing proceedings, including the actual state-level hearing, or*
24 *judicial proceeding regarding a due process hearing, the pupil*
25 *shall remain in his or her present placement, except as provided*
26 *in Section 300.526 of Title 34 of the Code of Federal*
27 *Regulations, unless the public agency and the parent or guardian*
28 *agree otherwise. A pupil applying for initial admission to a*
29 *public school shall, with the consent of his or her parent or*
30 *guardian, be placed in the public school program until all*
31 *proceedings have been completed. As provided in subsection (c)*
32 *of Section 300.514 of Title 34 of the Code of Federal*
33 *Regulations, if the decision of a hearing officer in a due process*
34 *hearing or a state review official in an administrative appeal*
35 *agrees with the parent or guardian of the pupil that a change of*
36 *placement is appropriate, that placement shall be treated as an*
37 *agreement between the state or local agency and the parent or*
38 *guardian.*

1 (e) Any party to the hearing held pursuant to this section shall
2 be afforded the following rights consistent with state and federal
3 statutes and regulations:

4 (1) The right to be accompanied and advised by counsel and
5 by individuals with special knowledge or training relating to the
6 problems of individuals with exceptional needs.

7 (2) The right to present evidence, written arguments, and oral
8 arguments.

9 (3) The right to confront, cross-examine, and compel the
10 attendance of, witnesses.

11 (4) The right to a written, or, at the option of the parents or
12 guardians, electronic verbatim record of the hearing.

13 (5) The right to written, or, at the option of the parent or
14 guardian, electronic findings of fact and decisions. The record of
15 the hearing and the findings of fact and decisions shall be
16 provided at no cost to parents or guardians in accordance with
17 paragraph (2) of subsection (c) of Section 300.509 of Title 34 of
18 the Code of Federal Regulations. The findings and decisions
19 shall be made available to the public after any personally
20 identifiable information has been deleted consistent with the
21 confidentiality requirements of subsection (c) of Section 1417 of
22 Title 20 of the United States Code and shall also be transmitted
23 to the Advisory Commission on Special Education pursuant to
24 paragraph (4) of subsection (h) of Section 1415 of Title 20 of the
25 United States Code.

26 (6) The right to be informed by the other parties to the hearing,
27 at least 10 days prior to the hearing, as to what those parties
28 believe are the issues to be decided at the hearing and their
29 proposed resolution of those issues. Upon the request of a parent
30 who is not represented by an attorney, the agency responsible for
31 conducting hearings shall provide a mediator to assist the parent
32 in identifying the issues and the proposed resolution of the issues.

33 (7) The right to receive from other parties to the hearing, at
34 least five business days prior to the hearing, a copy of all
35 documents and a list of all witnesses and their general area of
36 testimony that the parties intend to present at the hearing.
37 Included in the material to be disclosed to all parties at least five
38 business days prior to a hearing shall be all assessments
39 completed by that date and recommendations based on the
40 assessments that the parties intend to use at the hearing.

(8) The right, pursuant to paragraph (3) of subsection (a) of Section 300.509 of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) *In accordance with subparagraph (E) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code, the decision of a due process hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.* The hearing conducted pursuant to this section shall be completed and a written, reasoned decision, including the reasons for any nonpublic, nonsectarian school placement, the provision of nonpublic, nonsectarian agency services, or the reimbursement for such placement or services, taking into account the requirements of subdivision (a) of Section 56365, shall be mailed to all parties to the hearing within 45 days from the receipt by the Superintendent of the request for a hearing. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) Subdivision (f) does not alter the burden of proof required in a due process hearing, or prevent a hearing officer from ordering a compensatory remedy for an individual with exceptional needs.

(h) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(i) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(j) In a hearing conducted pursuant to this section, the hearing officer may not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program.

(k) This chapter does not preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party may also exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section 300.512 of Title 34 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), the child involved in the hearing shall remain in his or her present educational placement, unless the public education agency and the parent or guardian of the child agree otherwise. Any action brought under this subdivision shall adhere to the provisions of subsection (b) of Section 300.512 of Title 34 of the Code of Federal Regulations.

(l) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within ~~three~~ two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. *In accordance with subparagraph (D) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code, the timeline described in this subdivision shall not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following:*

(1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request.

(2) The local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

(m) Pursuant to subsection (c) of Section 300.508 of Title 34 of the Code of Federal Regulations, each public education agency shall keep a list of the persons who serve as due process hearing officers, in accordance with Section 56504.5, and the list shall include a statement of the qualifications of each of those persons. The list of hearing officers shall be provided to the public education agencies by the organization or entity under contract with the department to conduct due process hearings.

1 *SEC. 43. Section 56506 of the Education Code is amended to*
2 *read:*

3 56506. In addition to the due process hearing rights
4 enumerated in subdivision (b) of Section 56501, the following
5 due process rights extend to the pupil and the parent:

6 (a) Written notice to the parent of his or her rights in language
7 easily understood by the general public and in the native
8 language of the parent, as defined in Section 300.19 of Title 34
9 of the Code of Federal Regulations, or other mode of
10 communication used by the parent, unless to do so is clearly not
11 feasible. The written notice of rights shall include, but not be
12 limited to, those prescribed by Section 56341.

13 (b) The right to initiate a referral of a child for special
14 education services pursuant to Section 56303.

15 (c) The right to obtain an independent educational assessment
16 pursuant to subdivision (b) or (c) of Section 56329.

17 (d) The right to participate in the development of the
18 individualized education program and to be informed of the
19 availability under state and federal law of free appropriate public
20 education and of all available alternative programs, both public
21 and nonpublic.

22 (e) Written parental consent pursuant to Section 56321 shall
23 be obtained before any assessment of the pupil is conducted,
24 unless the public education agency prevails in a due process
25 hearing relating to the assessment. In accordance with subsection
26 (c) of Section 300.505 of Title 34 of the Code of Federal
27 Regulations, informed parental consent need not be obtained in
28 the case of a reassessment of the pupil if the local educational
29 agency can demonstrate that it has taken reasonable measures to
30 obtain consent and the pupil's parent has failed to respond.

31 (f) Written parental consent pursuant to Section ~~56321~~ 56346
32 shall be obtained before the pupil is placed in a special education
33 program.

34 (g) *A parent of an individual with exceptional needs may elect*
35 *to receive notices required under this chapter by an electronic*
36 *mail communication, if the local educational agency makes that*
37 *option available, in accordance with subdivision (n) of Section*
38 *1415 of Title 20 of the United States Code.*

39 *SEC. 44. Section 56507 of the Education Code is amended to*
40 *read:*

1 56507. (a) If either party to a due process hearing intends to
2 be represented by an attorney in the state hearing, notice of that
3 intent shall be given to the other party at least 10 days prior to the
4 hearing. The failure to provide that notice shall constitute good
5 cause for a continuance.

6 (b) (1) An award of reasonable attorneys' fees to the
7 prevailing parent, guardian, or pupil, as the case may be, may
8 only be made either with the agreement of the parties following
9 the conclusion of the administrative hearing process or by a court
10 of competent jurisdiction pursuant to paragraph (3) of subsection
11 (i) of Section 1415 of Title 20 of the United States Code.

12 (2) *In accordance with paragraph (3) of subsection (i) of*
13 *Section 1415 of Title 20 of the United States Code, the court, in*
14 *its discretion, may award reasonable attorneys' fees as part of*
15 *the costs to a prevailing party who is a state educational agency*
16 *or local educational agency in the following circumstances:*

17 (A) *Against the attorney of a parent who files a due process*
18 *hearing request or subsequent cause of action that is frivolous,*
19 *unreasonable, or without foundation, or against the attorney of a*
20 *parent who continued to litigate after the litigation clearly*
21 *became frivolous, unreasonable, or without foundation.*

22 (B) *Against the attorney of a parent, or against the parent, if*
23 *the parent's due process hearing request or subsequent cause of*
24 *action was presented for any improper purpose, such as to*
25 *harass, to cause unnecessary delay, or to needlessly increase the*
26 *cost of litigation.*

27 (c) Public education agencies shall not use federal funds
28 distributed under Part B of the *federal* Individuals with
29 Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or other
30 federal special education funds, for the agency's own legal
31 counsel or other advocacy costs, that may include, but are not
32 limited to, a private attorney or employee of an attorney, legal
33 paraprofessional, or other paid advocate, related to a due process
34 hearing or the appeal of a hearing decision to the courts. Nor
35 shall the funds be used to reimburse parents who prevail and are
36 awarded attorneys' fees, pursuant to subdivision (b), as part of
37 the judgment. Nothing in this subdivision shall preclude public
38 agencies from using these funds for attorney services related to
39 the establishment of policy and programs, or responsibilities,
40 under Part B of the Individuals with Disabilities Education Act

(20 U.S.C. Sec. 1400 et seq.) and the program administration of these programs. This subdivision does not apply to attorneys and others hired under contract to conduct administrative hearings pursuant to subdivision (a) of Section 56505.

(d) The hearing decision shall indicate the extent to which each party has prevailed on each issue heard and decided, including issues involving other public agencies named as parties to the hearing.

SEC. 45. Section 56509 is added to the Education Code, to read:

56509. This chapter, in accordance with subsection (o) of Section 1415 of Title 20 of the United States Code, does not preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

~~SECTION 4.~~

SEC. 46. Section 56515 of the Education Code is amended to read:

56515. (a) In addition to the provisions of Chapter 6.5 (commencing with Section 49060) of Part 27, the confidentiality of personally identifiable information about individuals with exceptional needs shall be governed and protected in accordance with the provisions of Sections 300.560 to 300.577, inclusive, of Title 34 of the Code of Federal Regulations, including, notice to parents, access rights, records on more than one child, lists and types of locations of information, parental consent regarding the disclosure of personally identifiable information, fees for copies of records, amendment of records at parent's request, opportunity for a hearing, safeguards, destruction of information, children's privacy rights, enforcement, and disciplinary information about an individual with exceptional needs.

(b) Pursuant to paragraph (3) of subsection (b) of Section 300.500 of Title 34 of the Code of Federal Regulations, "personally identifiable," as used in this part, includes all of the following information:

(1) The name of the child, the child's parent, or other family member.

(2) The address of the child.

(3) A personal identifier, including, but not limited to, the child's social security number, a pupil number, a list of personal

characteristics, or other information that would make it possible to identify the child with reasonable certainty.

(c) In accordance with subdivision (b) of Section 300.571 of Title 34 of the Code of Federal Regulations, an agency or institution subject to Section 99.1 of Title 34 of the Code of Federal Regulations shall not release information from the education records of an individual with exceptional needs to participating agencies without the consent of the parent or guardian, unless authorized to do so under Section 99.1 of Title 34 of the Code of Federal Regulations.

SEC. 47. Section 56837 of the Education Code is repealed.

~~56837. In each fiscal year for which the amounts appropriated by the federal government for Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), other than for preschool grants under Section 1419 of Title 20 of the United States Code, reaches four billion nine hundred twenty-four million six hundred seventy-two thousand two hundred dollars (\$4,924,672,200) for the various states, the federal funding for local entitlements shall be allocated through the annual Budget Act in the following manner:~~

~~(a) The base year amount shall be allocated in a per pupil amount based on the number of pupils that have an individualized education program on December 1 of the fiscal year preceding the fiscal year for which the determination is made. The term "base year" means the federal fiscal year preceding the first fiscal year in which this section applies.~~

~~(b) Of the remaining federal funds for local entitlements exceeding the amount calculated for the base year, 85 percent shall be allocated to districts, special education local plan areas, and county offices on the basis of the relative number of pupils enrolled in public and private elementary and secondary schools within the districts', special education local plan areas', and county offices' jurisdiction; and 15 percent shall be allocated to districts, special education local plan areas, and county offices in accordance with the relative number of children living in poverty in the jurisdiction, as determined by the superintendent.~~

~~(c) At least 75 percent of the federal grant funds under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) shall be allocated to districts, special education local plan areas, and county offices.~~

~~(d) Until the federal appropriation for Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) reaches four billion nine hundred twenty-four million six hundred seventy-two thousand two hundred dollars (\$4,924,672,200), the federal funding for local entitlements shall be allocated on a per pupil amount based on the number of pupils having an individualized education program on December 1 of the fiscal year preceding the fiscal year for which the appropriation is made.~~

SEC. 48. Section 56837 is added to the Education Code, to read:

56837. For each fiscal year for which federal funds under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) are allocated to the state pursuant to subsection (d) of Section 1411 of Title 20 of the United States Code, the federal funding for local entitlements shall be allocated through the annual Budget Act in the following manner:

(a) The state shall first award each local educational agency, including public charter schools that operate as local educational agencies, the amount the local educational agency would have received under Section 1411 for the 1999 fiscal year.

(b) After calculating the allocations under subdivision (a), the state shall do both of the following:

(1) Allocate 85 percent of any remaining funds to the local educational agencies described in subdivision (a) on the basis of the relative numbers of pupils enrolled in public and private elementary schools and secondary schools within each local educational agency's territorial jurisdiction.

(2) Allocate 15 percent of the remaining funds to those educational agencies described in subdivision (a) in accordance with the relative numbers of children living in poverty within each local, local educational agency's jurisdiction, as determined by the Superintendent.

SEC. 49. Section 56838 of the Education Code is amended to read:

56838. In each fiscal year for which federal funds are received by the state pursuant to Section 1419 of Title 20 of the United States Code for individuals with exceptional needs

1 between the ages of 3 and 5, inclusive, the portion of funds
2 available for local entitlements *that not reserved for state*
3 *activities pursuant to subsection (d) of Section 1419 of Title 20 of*
4 *the United States Code* shall be allocated through the annual
5 Budget Act in the following manner:

6 ~~(a) The district, special education local plan area, or county~~
7 ~~office shall receive a base entitlement calculated pursuant to its~~
8 ~~share of the federal fiscal year 1997 state grant for this program.~~

9 ~~(b) Of the remaining federal funds for local entitlements~~
10 ~~beyond the amount received for the federal fiscal year 1997, 85~~
11 ~~percent shall be allocated to districts, special education local plan~~
12 ~~areas, and county offices on the basis of the relative number of~~
13 ~~pupils enrolled in public and private elementary and secondary~~
14 ~~schools within the jurisdiction of the district, special education~~
15 ~~local plan area, or county office; and 15 percent shall be~~
16 ~~allocated to districts, special education local plan areas, and~~
17 ~~county offices in accordance with the relative number of children~~
18 ~~in the jurisdiction living in poverty, as determined by the~~
19 ~~superintendent.~~

20 *(a) The state shall first award to each local educational*
21 *agency, including public charter schools that operate as local*
22 *educational agencies, the amount the local educational agency*
23 *would have received under Section 1419 of Title 20 of the United*
24 *States Code for the 1997 federal fiscal year.*

25 *(b) After calculating the allocations under subdivision (a), the*
26 *state shall do both of the following:*

27 *(1) Allocate 85 percent of any remaining funds to those local*
28 *educational agencies described in subdivision (a) on the basis of*
29 *the relative numbers of pupils enrolled in public and private*
30 *elementary schools and secondary schools within each local*
31 *educational agency's territorial jurisdiction.*

32 *(2) Allocate 15 percent of those remaining funds to the local*
33 *educational agencies in accordance with the relative number of*
34 *children within each local educational agency living in poverty,*
35 *as determined by the Superintendent.*

36 *SEC. 50. Section 56841 of the Education Code is amended to*
37 *read:*

38 *56841. (a) Federal funds available through Part B of the*
39 *federal Individuals with Disabilities Education Act (20 U.S.C.*

1 Sec. 1400 et seq.) and appropriated through the annual Budget
2 Act shall only be used as follows:

3 (1) For the excess costs of *providing* special education *and*
4 *related services to individuals with exceptional needs*.

5 (2) To supplement state, local, and other federal funds and not
6 *to supplant* those funds.

7 (b) Except as provided in subdivisions (c) and (d), the funds
8 shall not be used to reduce the level of expenditures for the
9 education of individuals with exceptional needs made by
10 ~~districts, special education local plan areas, and county offices~~
11 *the local educational agency* from local funds below the level of
12 those expenditures ~~in~~ for the preceding fiscal year.

13 (c) Notwithstanding subdivision (b), a ~~district, special~~
14 ~~education local plan area, or county office~~ *local educational*
15 *agency* may reduce the level of expenditures from local funds
16 where the reduction is attributable to the following:

17 (1) The voluntary departure, by retirement or otherwise, or
18 departure for just cause, of special education personnel.

19 (2) A decrease in the enrollment of individuals with
20 exceptional needs.

21 (3) The termination of the obligation of the ~~district, special~~
22 ~~education local plan area, and county office~~ *local educational*
23 *agency*, consistent with this part, to provide a program of special
24 education to an individual or individuals with exceptional needs
25 *that is an exceptionally costly program, as determined by the*
26 *Superintendent, because any of the following is applicable:*

27 (A) *The child has left the jurisdiction of the local educational*
28 *agency.*

29 (B) *The child has reached the age at which the obligation of*
30 *the local educational agency to provide a free appropriate public*
31 *education to the child has terminated.*

32 (C) *The child no longer needs the program of special*
33 *education.*

34 (4) The termination of costly expenditures for long-term
35 purchases, such as the acquisition of equipment or the
36 construction of facilities.

37 (d) Notwithstanding the provisions of ~~subdivisions (a) and~~
38 ~~paragraph (2) of subdivision (a) and subdivision (b)~~, for any
39 fiscal year in which the ~~amounts appropriated by Congress for~~
40 ~~the purposes of Section 1411 of Title 20 of the United States~~

~~Code exceed four billion one hundred million dollars (\$4,100,000,000), a district, special education local plan area, or county office, may reduce expenditures from local funds for the education of individuals with exceptional needs by an amount that shall not exceed 20 percent of the amount of federal funds available under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and allocated to the district, special education local plan area, and county office which exceeds the amount of these funds received by the district, special education local plan area, or county office in the preceding fiscal year. allocation received by a local educational agency under subsection (f) of Section 1411 of Title 20 of the United States Code exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by clause (iii) of subparagraph (A) of paragraph (2) of subsection (a) of Section 1413 of Title 20 of the United States Code by not more than 50 percent of the amount of the excess. If a local educational agency exercises the authority under this subdivision, the local educational agency shall use an amount of local funds equal to the reduction in expenditures under this subdivision to carry out activities authorized under the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.).~~

(e) Notwithstanding subdivision (d), if the Superintendent determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) of Section 1413 of Title 20 of the United States Code, or if the Superintendent has taken action against the local educational agency under Section 1416 of Title 20 of the United States Code, the Superintendent shall prohibit the local educational agency from reducing the level of expenditures under subdivision (d) for that fiscal year.

(f) The amount of funds expended by a local educational agency under subsection (f) of Section 1413 of the United States Code for early intervention services shall count toward the maximum amount of expenditures the local educational agency may reduce under subdivision (d) of this section.

(g) Notwithstanding subparagraph (A) of paragraph (2) of subsection (a) of Section 1413 of Title 20 of the United States

1 *Code or any other provision of the federal Individuals with*
2 *Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) a local*
3 *educational agency may use federal special education funds for*
4 *any fiscal year to carry out a schoolwide program under Section*
5 *1114 of the federal Elementary and Secondary Education Act of*
6 *1965 (20 U.S.C. Sec. 6301 et seq.), except that the amount so*
7 *used in any such program shall not exceed the number of*
8 *individuals with exceptional needs participating in the*
9 *schoolwide program, multiplied by the amount received by the*
10 *local educational agency under this article for that fiscal year,*
11 *and divided by the number of individuals with exceptional needs*
12 *in the jurisdiction of that local educational agency.*

13 *(h) Notwithstanding subdivisions (a) to (g), inclusive, a local*
14 *educational agency may also use federal special education funds*
15 *for other purposes specified in subsection (a) of Section 1413 of*
16 *Title 20 of the United States Code.*

17 ~~(e) A district, special education local plan area, or county~~
18 ~~office may reduce expenditures from local funds for the~~
19 ~~education of individuals with exceptional needs pursuant to~~
20 ~~subdivision (d) only if the superintendent determines that the~~
21 ~~district, special education local plan area, or county office is~~
22 ~~meeting the requirements of this part and the requirements of the~~
23 ~~Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400~~
24 ~~et seq.) regarding the education of individuals with exceptional~~
25 ~~needs.~~

26 *SEC. 51. Section 56842 of the Education Code is repealed.*

27 ~~56842. The superintendent shall annually identify and submit~~
28 ~~to the Director of Finance recommendations for~~
29 ~~capacity-building and improvement grants for districts, special~~
30 ~~education local plan areas, or county offices for appropriation~~
31 ~~through the annual Budget Act. The capacity-building and~~
32 ~~improvement grants, if approved by the Legislature and the~~
33 ~~Governor, would be available to districts, special education local~~
34 ~~plan areas, and county offices pursuant to paragraph (4) of~~
35 ~~subsection (f) of Section 1411 of Title 20 of the United States~~
36 ~~Code. The capacity-building and improvement grant~~
37 ~~recommendations shall be submitted to meet the annual deadline~~
38 ~~of the Director of Finance for the development of the annual~~
39 ~~Budget Act.~~

SEC. 52. Section 56842 is added to the Education Code, to read:

56842. (a) A local educational agency may not use more than 15 percent of the amount the agency receives under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) for any fiscal year, less any amount reduced by the local educational agency pursuant to subparagraph (C) of paragraph (2) of subsection (a) of Section 1413 of Title 20 of the United States Code, if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement, coordinated, early intervening services, which may include interagency financing structures, for pupils in kindergarten and in grades 1 to 12, inclusive, with a particular emphasis on pupils in kindergarten and in grades 1 to 3, inclusive, who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

(b) The implementation of the coordinated, early intervening services under this section, including activities, reporting, and coordination with the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.), shall be carried out by a local educational agency as specified in subsection (f) of Section 1413 of Title 20 of the United States Code.

(c) This section does not limit or create a right to a free appropriate public education under this part.

SEC. 53. Section 56843 is added to the Education Code, to read:

56843. (a) From the amount of funds the state reserves for state-level activities under subparagraph (A) of paragraph (2) of subsection (e) of Section 1411 of Title 20 of the United States Code, 10 percent shall be reserved each fiscal year for the local educational agency risk pool for the purpose of assisting local educational agencies, including a charter school that is a local educational agency or a consortium of local educational agencies, in addressing the needs of high need individuals with exceptional needs, in accordance with requirements described in paragraph (3) of subsection (e) of Section 1411 of Title 20 of the United States Code.

(b) Pursuant to subparagraph (C) of paragraph (3) of subsection (e) of Section 1411 of Title 20 of the United States Code, the Superintendent shall establish a state plan for a high cost fund and establish the state's definition of high need individuals with exceptional needs, in coordination and consultation with local educational agencies.

SEC. 54. Section 56844 is added to the Education Code, to read:

56844. In complying with paragraph (17), regarding the prohibition against supplantation of federal funds, and paragraph (18), regarding maintenance of state financial support for special education and related services, of subsection (a) of Section 1412 of Title 20 of the United States Code, the state may not use funds paid to it under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to satisfy state-mandated funding obligations to local educational agencies, including funding based on pupil attendance or enrollment, or on inflation.

SEC. 55. Section 7579.5 of the Government Code is amended to read:

7579.5. (a) In accordance with subparagraph (B) of paragraph (2) of subsection (b) of Section 1415 of Title 20 of the United States Code, a local educational agency shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local educational agency that a child needs a surrogate parent. A local educational agency shall appoint a surrogate parent for a child in accordance with ~~clause (iii) of paragraph (2) of subsection (e) of~~ Section 300.515 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

(1) (A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program, (B) the court has specifically limited the right of the parent or guardian to make educational decisions for the child, and (C) the child has no responsible adult to represent him or her pursuant to

1 Section 361 or 726 of the Welfare and Institutions Code or
2 Section 56055 of the Education Code.

3 (2) No parent for the child can be identified.

4 (3) The local educational agency, after reasonable efforts,
5 cannot discover the location of a parent.

6 (b) When appointing a surrogate parent, the local educational
7 agency shall, as a first preference, select a relative caretaker,
8 foster parent, or court-appointed special advocate, if any of these
9 individuals exists and is willing and able to serve. If none of
10 these individuals is willing or able to act as a surrogate parent,
11 the local educational agency shall select the surrogate parent of
12 its choice. If the child is moved from the home of the relative
13 caretaker or foster parent who has been appointed as a surrogate
14 parent, the local educational agency shall appoint another
15 surrogate parent if a new appointment is necessary to ensure
16 adequate representation of the child.

17 (c) For the purposes of this section, the surrogate parent shall
18 serve as the child's parent and shall have the rights relative to the
19 child's education that a parent has under Title 20 (commencing
20 with Section 1400) of the United States Code and pursuant to
21 Part 300 of Title 34 (commencing with Section 300.1) of the
22 Code of Federal Regulations. The surrogate parent may represent
23 the child in matters relating to special education and related
24 services, including the identification, assessment, instructional
25 planning and development, educational placement, reviewing and
26 revising the individualized education program, and in all other
27 matters relating to the provision of a free appropriate public
28 education of the child. Notwithstanding any other provision of
29 law, this representation shall include the provision of written
30 consent to the individualized education program including
31 nonemergency medical services, mental health treatment
32 services, and occupational or physical therapy services pursuant
33 to this chapter.

34 (d) The surrogate parent is required to meet with the child at
35 least one time. He or she may also meet with the child on
36 additional occasions, attend the child's individualized education
37 program meetings, review the child's educational records,
38 consult with persons involved in the child's education, and sign
39 any consent relating to individualized education program
40 purposes.

1 (e) As far as practical, a surrogate parent should be culturally
2 sensitive to his or her assigned child.

3 (f) The surrogate parent shall comply with federal and state
4 law pertaining to the confidentiality of student records and
5 information and shall use discretion in the necessary sharing of
6 the information with appropriate persons for the purpose of
7 furthering the interests of the child.

8 (g) The surrogate parent may resign from his or her
9 appointment only after he or she gives notice to the local
10 educational agency.

11 (h) The local educational agency shall terminate the
12 appointment of a surrogate parent if (1) the person is not properly
13 performing the duties of a surrogate parent or (2) the person has
14 an interest that conflicts with interests of the child entrusted to
15 his or her care.

16 (i) Individuals who would have a conflict of interest in
17 representing the child, as specified under federal regulations,
18 may not be appointed as a surrogate parent. "An individual who
19 would have a conflict of interest," for purposes of this section,
20 means a person having any interests that might restrict or bias his
21 or her ability to advocate for all of the services required to ensure
22 that the child has a free appropriate public education.

23 (j) Except for individuals who have a conflict of interest in
24 representing the child, and notwithstanding any other law or
25 regulation, individuals who may serve as surrogate parents
26 include, but are not limited to, foster care providers, retired
27 teachers, social workers, and probation officers who are not
28 employees of the State Department of Education, the local
29 educational agency, or any other agency that is involved in the
30 education or care of the child.

31 (1) A public agency authorized to appoint a surrogate parent
32 under this section may select a person who is an employee of a
33 nonpublic agency that only provides noneducational care for the
34 child and who meets the other standards of this section.

35 (2) A person who otherwise qualifies to be a surrogate parent
36 under this section is not an employee of the local educational
37 agency solely because he or she is paid by the local educational
38 agency to serve as a surrogate parent.

39 (k) The surrogate parent may represent the child until (1) the
40 child is no longer in need of special education, (2) the minor

1 reaches 18 years of age, unless the child chooses not to make
2 educational decisions for himself or herself, or is deemed by a
3 court to be incompetent, (3) another responsible adult is
4 appointed to make educational decisions for the minor, or (4) the
5 right of the parent or guardian to make educational decisions for
6 the minor is fully restored.

7 (l) The surrogate parent and the local educational agency
8 appointing the surrogate parent shall be held harmless by the
9 State of California when acting in their official capacity except
10 for acts or omissions that are found to have been wanton,
11 reckless, or malicious.

12 (m) The State Department of Education shall develop a model
13 surrogate parent training module and manual that shall be made
14 available to local educational agencies.

15 (n) Nothing in this section may be interpreted to prevent a
16 parent or guardian of an individual with exceptional needs from
17 designating another adult individual to represent the interests of
18 the child for educational and related services.

19 (o) If funding for implementation of this section is provided, it
20 may only be provided from Item 6110-161-0890 of Section 2.00
21 of the annual Budget Act.

22 *SEC. 56. Section 7579.6 is added to the Government Code, to*
23 *read:*

24 *7579.6. (a) In accordance with subparagraph (A) of*
25 *paragraph (2) of subsection (b) of Section 1415 of Title 20 of the*
26 *United States Code, in the case of a child who is a ward of the*
27 *state, the surrogate parent described in Section 7579.5 may*
28 *alternatively be appointed by the judge overseeing the child's*
29 *care provided that the surrogate meets the requirements of*
30 *Section 7579.5.*

31 *(b) In the case of an unaccompanied homeless youth as*
32 *defined in paragraph (6) of Section 725 of the McKinney-Vento*
33 *Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)), the local*
34 *educational agency shall appoint a surrogate in accordance with*
35 *Section 7579.5.*

36 *SEC. 57. No reimbursement is required by this act pursuant*
37 *to Section 6 of Article XIII B of the California Constitution*
38 *because this act implements a federal law or regulation and*

- 1 *results only in costs mandated by the federal government, within*
- 2 *the meaning of Section 17556 of the Government Code.*

O